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| |  | MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Nov 14, 1967. | MD-50H Card 2 of 4 |
| |  | MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Nov 14, 1967. | MD-50H Card 3 of 4 |
| |  | MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Nov 14, 1967. | MD-50H Card 4 of 4 |

Maryland Room
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CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

November 14, 1967 - 10:00 a.m.

HONORABLE H. VERNON ENEY,
PRESIDENT

Reported by:

C. J. Hunt

and

W. P. Banister

1 THE PRESIDENT: The Sergeant at Arms will clear
2 the aisles and close the doors.

3 The Convention will please come to order.

4 The invocation today will be offered by the
5 Reverend Robert L. Kessler, of St. Mary's Catholic Church,
6 Laurel, Maryland. Father Kessler.

7 REVEREND KESSLER: Let us pray: Our gracious
8 Father in heaven, we pray for skill in the art of states-
9 manship that we may rise to our full stature as faithful
10 sons and daughters of Maryland. Give us courage -- courage
11 to think clearly about the meaning of life, even though
12 that understanding means bidding farewell to cherished
13 illusions; courage to blaze new ideas, even though their
14 acceptance shatters the pleasant little world of make-believe
15 courage to love what is right rather than what is expedient,
16 even though that love means sacrifice and service and
17 ceaseless longing; courage to fight evil, even though bat-
18 tle means wounds and weariness and heartache.

19 Heavenly Father, we pray for the prosperity of our
20 State. Give wisdom to those here assembled in convention
21 to plan its program, to fashion the ideals of her people,

1 to unite us in good will, understanding and brotherhood.
2 Forbid that we be satisfied with half measures, with half-
3 finished tasks, with half won victories.

4 Let us carry to completion the high endeavors of
5 our hearts. Unto this end we ask Thy blessing and the
6 light of Thy countenance and the joy of Thy presence. Am

7 THE PRESIDENT: Roll call.

8 Have all delegates answered the roll call?

9 The Clerk will record the roll call.

10 There being a quorum present, the Convention is
11 in session.

12 The Chair recognizes Delegate Powers, Chairman
13 of the Committee on Calendar and Agenda.

14 DELEGATE POWERS: Mr. President, I move the adop-
15 tion of today's Calendar.

16 THE PRESIDENT: Is there a second?

17 (Whereupon the motion was seconded.)

18 All in favor, signify by saying Aye; contrary, No.
19 The Ayes have it. The motion is carried. The Calendar
20 is adopted.

21 Are there any reports of other standing committees?

1 MR. WAGONHEIM: No, Mr. Chairman.

2 THE PRESIDENT: There are no proposals. Are there
3 any motions or resolutions?

4 (There was no response.)

5 Before going into the Committee of the Whole, I
6 want to say to you two things: One, I am delighted to
7 be back here this morning. I feel, after the talks I had yes-
8 terday, really at home. I was fortunate in being able
9 to talk to persons who had been directly involved in the
10 New York Convention, the Connecticut Convention, the
11 Kentucky Convention, and the Florida Convention.

12 I don't think there are any startling situations
13 with respect to any of those conventions that we are not
14 all fairly well aware of, except perhaps the situation in
15 Florida, which is quite different from what I thought it
16 was; and it is quite apparent now that it is most unlikely
17 that there will be any constitutional revisions in Florida
18 this year.

19 The situation in New York has been pretty
20 accurately reported in the press. I think the chief im-
21 pression I got from the discussion I had with one of the

1 delegates was that the result of the balloting, while not
2 completely unanticipated, was completely unanticipated as
3 to the lopsided nature of it. It was anticipated that
4 it would be a much closer issue.

5 It also is quite apparent from the discussions I
6 had that the situation in New York, the resulting balloting
7 was because of the emotional issues, not merely the church-
8 state issue, but other issues having to do with physical
9 policies, welfare and so forth.

10 At an appropriate time, and I will endeavor to
11 make known to the Convention in a little more detail,
12 some of the suggestions passed on to me and to the Conven-
13 tion, to our Convention through me by the delegate from
14 New York.

15 The Chair recognizes Delegate Powers, Chairman
16 of the Committee on Calendar and Agenda.

17 DELEGATE POWERS: Mr. President, I move the
18 Convention resolve itself into the Committee of the Whole
19 for the purpose of considering the orders of the day.

20 THE PRESIDENT: Is there a second, Delegate
21 Powers?

1 DELEGATE POWERS: Subject to the debate limita-
2 tions as have been previously imposed.

3 THE PRESIDENT: Delegate Powers, I note on the
4 Agenda that Debate Schedule 4 is listed for the consider-
5 ation of Committee Recommendation JB-1, but I don't believe
6 that has been printed as yet; is that correct?

7 DELEGATE POWERS: Mr. President, that has not
8 as yet been distributed, but I am sure it will be avail-
9 able before we reach that point in the Agenda.

10 THE PRESIDENT: At the present time we will be
11 operating, then, under your motion, without debate schedule,
12 for the consideration of Committee Recommendation GP-3,
13 and under Debate Schedule No. 3 for the consideration of
14 Committee Recommendation LB-1; is that correct?

15 DELEGATE POWERS: That is right, Mr. President.

16 THE PRESIDENT: Is there a second to the motion?
17 (Whereupon, the motion was seconded.)

18 All in favor, signify by saying Aye; contrary, No.

19 The Ayes have it. It is so ordered. The Committee
20 of the Whole will please come to order.

21 (Whereupon, at 10:07 o'clock a.m., the Convention

1 resolved itself into the Committee of the Whole.)

2 (The mace was removed by the Sergeant at Arms.)

3 THE CHAIRMAN: The first item on the general or-
4 ders is consideration of Committee Recommendation No. GP-3.
5 That is accompanied by Committee Memorandum No. GP-3.
6 Chair recognizes Delegate Boyer, Chairman of the Committee,
7 for the purpose of presenting the Committee Recommendation
8 GP-3. Come forward, please. Delegate Boyer.

9 DELEGATE BOYER: Mr. Chairman, ladies and gentle-
10 men of this Convention, your Committee on General Pro-
11 visions presents to you for your consideration GP-3,
12 our recommendation on natural resources.

13 I would like to pay public thanks first to the
14 subcommittee that worked so very hard on this sometimes
15 emotional issue. The subcommittee was chaired by
16 Delegate Ritter, and consisted of Delegate Jett and Dele-
17 gate Singer.

18 We feel that there should be some broad policy
19 statement in the Constitution concerning natural resources.

20 There were many citizens, interested citizens,
21 intensely interested in the application of sound con-

1 versation principles, and it was an undisputed fact that
2 when the present Constitution of Maryland was being for-
3 mulated, the State abounded in virgin timber so much so
4 that it was being burned away and cleared off for farming
5 spaces. In short, resources in 1867 were in man's way.
6 The vast supply of oysters and other seafood was just then
7 becoming the basis of industry. Again, fish, wildlife,
8 and open spaces were thought to be unlimited in supply,
9 and inexhaustible as far as man was concerned.

10 Polluted air and water were not yet in the offing,
11 while wetlands were merely nuisance value.

12 It seemed to appear to the framers of our present
13 Constitution that there was no need of worry about future
14 supply of lumber, firewood and denizens of the forests,
15 fields, and waters. At that time such were present in
16 superabundance, and available merely for the taking. Sole
17 maintenance and protection were not yet of concern in Mary-
18 land for several decades, and shore erosion was not yet
19 given the attention that it deserved.

20 In 1912 the Maryland Extension Service was or-
21 ganized, and from that day forward, there appeared to be a

1 giant step towards conservation of our natural resources.

2 These challenged backwards conditions in the
3 management of natural resources and led to new and better
4 things for the citizen of the State.

5 With these changes have come more recently new
6 conditions not even considered by the old Constitutional
7 delegates, and concerns about conservation, a term that not
8 until this century found its way into the legislative halls.

9 With that basis and background your Committee felt
10 that there was a need for a broad statement of conserva-
11 tion policy, and for that purpose we submit to you our
12 recommendation LB-3 on natural resources. Thank you.

13 THE CHAIRMAN: Are there any questions for pur-
14 poses of clarification? Delegate Willoner.

15 DELEGATE WILLONER: Mr. Chairman, I wonder what
16 is the legal effect of this. Would this prohibit, for
17 example, the State from selling park land to private enter-
18 prise? What would be the effect if you left this provision
19 out?

20 DELEGATE BOYER: I can see no ill effect from
21 it. It certainly would not prevent the State from selling

1 park land if it so desired for meritorious purposes.

2 DELEGATE WILLONER: What would be the effect of it
3 being in the Constitution?

4 DELEGATE BOYER: The effect would be, natural re-
5 sources and conservation would probably be blessed by
6 recognition.

7 THE CHAIRMAN: Delegate Willoner.

8 DELEGATE WILLONER: It is the contemplation of the
9 Committee then that this particular Commission would have
10 no operable effect. It is just a statement of general
11 policy?

12 DELEGATE BOYER: I think it is both, Delegate
13 Willoner, a statement of general policy, and I think it would
14 have a very direct operative effect because it would
15 pointedly for the first time make natural resources a
16 constitutional recognition. It has never been considered
17 so because there was no need for it back in 1867. Today
18 there is direct need for it, and this would allow and
19 point out to the General Assembly that we as delegates here
20 are cognizant of that fact and wish that they would take
21 some steps to protect our natural resources.

1 THE CHAIRMAN: Delegate Willoner.

2 DELEGATE WILLONER: What would be the applicable
3 effect.

4 DELEGATE BOYER: I don't understand your question.

5 DELEGATE WILLONER: You said it would have an
6 operable effect. My question is, how would it operate,
7 other than as a reminder to the legislature to take
8 certain acts. We are interested in conservation. What
9 would be the effect of it, judicially?

10 DELEGATE BOYER: I imagine that would be up to
11 the Judicial Branch to determine what the judicial effect
12 would be. Operatively it would certainly point out to the
13 legislature, as I say again, we are cognizant of the natural
14 resources and conservation and point out to them, it is
15 our thought that there should be some protection taken by
16 the General Assembly because it says the General Assembly
17 shall provide by law.

18 THE CHAIRMAN: Delegate Boyer, ^{if}/I could interrupt,
19 maybe the difficulty is with the use of the word "oper-
20 able". I think Delegate Willoner means will this pro-
21 vision be self-executing in any way or will it require

1 legislation to implement it.

2 DELEGATE BOYER: It will require legislation.

3 The General Assembly shall by law provide for it.

4 THE CHAIRMAN: Delegate Scanlan.

5 DELEGATE SCANLAN: I have two questions of the
6 Chairman of the General Provisions Committee. First, s
7 this provision vest any power in the General Assembly that
8 it does not already have by virtue of its plenary power,
9 and secondly, if for example, the General Assembly failed
10 to enact legislation to enhance and to protect the natural
11 resources, environment, scenic beauty of the State, would
12 there be any power by which they could be mandamusd to do
13 that if they failed to act?

14 DELEGATE BOYER: In answer to your first question,
15 if there is any question about whether the General Assem-
16 bly has now the power to do it, this would remove all
17 doubt. In answer to your second question, it appears
18 to me that the law is, if the constitutional provision is
19 passed and the General Assembly is put on notice that they
20 shall by law provide for enhancement, improvement and
21 protection of natural resources, and if, following that,

1 if they refuse or neglect to do that, certainly the court by
2 mandamus could direct the use of it.

3 THE CHAIRMAN: Delegate Scanlan.

4 DELEGATE SCANLAN: With respect to your answer
5 to the first question, you indicated that there was some
6 doubt, and I wanted to make clear whether the research of
7 your Committee had indicated that there was any doubt that
8 the General Assembly now has the power to do what they are
9 asked to do here, and secondly, the answer to the second
10 question, are there any precedents in this State where
11 the court, any court of this State has ever mandamusd the
12 legislature to do anything?

13 THE CHAIRMAN: Delegate Boyer.

14 DELEGATE BOYER: In answer to your first question,
15 my answer to your first question, the legislature, as you
16 know, has for years been gradually increasing its interest
17 and attention to natural resources, air pollution, water
18 pollution, et cetera. We felt that there probably was
19 ample authority, statutorywise, for the General Assembly
20 to continue it. However, if -- I didn't indicate there
21 was any doubt -- but if there was doubt in anyone's mind,

1 and there seemed to be in the eyes of interested citizens
2 who testified before us, this would remove all doubt.

3 In answer to your second question, in response to
4 my answer to your second question, we could find no pre-
5 cedent where the General Assembly was mandamused, or re-
6 quired to do it. They seemed to have been gradually doing
7 this voluntarily on an increasing basis, but this would
8 certainly be removed by presenting something in the Con-
9 stitution requiring them mandatorilywise to do this.

10 THE CHAIRMAN: Are there any other questions?
11 Delegate Byrnes.

12 DELEGATE BYRNES: Mr. Chairman, you mentioned brief-
13 ly air and water pollution. I would like to ask you at
14 this time, does the word "environment" include such a
15 mandate to the legislature to look into the matter of the
16 general protection of air and water? Is this what is in-
17 tended by the use of this language?

18 DELEGATE BOYER: The word "environment" was the
19 last addition that we made to our recommendation here.
20 If you will read the recommendation with the two words
21 "and environment", you will have the recommendation as

we originally contemplated it. At the request of

1 Delegate Singer, the words "and environment" were added.
2 This passed in our Committee by a 6 to 5 vote; so the
3 words "and environment" were included. That is the history
4 of it.

5 DELEGATE BYRNES: Do I interpret this correctly --
6 that you do intend to cover air and water pollution by
7 this particular mandate to the legislature?

8 DELEGATE BOYER: Yes. It is our intention as
9 stated in the commentary that we want the broadest pos-
10 sible interpretation. May I call to your attention on
11 Page 2 of the commentary that, at the bottom of Page 1,
12 we intend to give it the broadest possible interpretation.
13 This would include the abatement and prevention of air
14 and water pollution, which would fall into this category.

15 DELEGATE BYRNES: Thank you.

16 THE CHAIRMAN: Are there any other questions?
17 Delegate Schneider.

18 DELEGATE SCHNEIDER: I would like to ask, I know
19 some of the recent constitutions that have been enacted
20 have contained provisions similar to this. Does your
21 Committee know of any provisions in constitutions which

1 have been around a bit longer and perhaps tested, and if so,
2 what effect such a conservation provision has had, if any?

3 DELEGATE BOYER: Yes. There are other constitu-
4 tions -- Michigan, New York, which had the ill-fated
5 worded constitution.

6 DELEGATE JAMES: Hawaii.

7 DELEGATE BOYER: Hawaii. Other States have
8 adopted in their Constitutions forest reserves and some of
9 them go into great length. It is difficult to know when you
10 get started where to stop, and the Committee was afraid
11 that by inclusion, we may have later court interpretation
12 that we mean to exclude those that we neglected to include.
13 We thought that we could best serve the interest, the
14 public interest by making a broad policy statement and in
15 our commentary, try to spell out that it did include the
16 broadest possible interpretation and not fall into perhaps
17 the pitfall that other State Constitutions have, by
18 rambling on for three or four pages.

19 THE CHAIRMAN: Delegate Schneider.

20 DELEGATE SCHNEIDER: Do you have any indication
21 that these have had any effectiveness whatsoever in these

1 States? In other words, do you have any cases where the
2 legislature has been told to act or not to act because
3 the Constitution says that we should preserve natural re-
4 sources and scenic beauty?

5 DELEGATE BOYER: No, sir.

6 THE CHAIRMAN: Delegate Clagett.

7 DELEGATE CLAGETT: Mr. Chairman, you do intend,
8 do you not, that the words "and environment" be considered
9 in conjunction with natural resources only, do you not?

10 DELEGATE BOYER: Yes, sir.

11 DELEGATE CLAGETT: And you do not take us off
12 into the area of social environment or slum area or any-
13 thing of that kind?

14 DELEGATE BOYER: No. I think, I am glad you
15 brought that up, Delegate Clagett; this is certainly our
16 intention, natural resources and natural environment, not
17 social or physical, manmade environment.

18 THE CHAIRMAN: Delegate Hanson.

19 DELEGATE HANSON: Delegate Boyer, I have two
20 questions: One, would the existence of this language
21 in the Constitution preclude local governments in the State

1 taking action to conserve environmental resources?

2 DELEGATE BOYER: I would think not. It seems to
3 be the trend apparently of this Convention to give broader
4 powers to local government. We will learn more about that
5 as Local Government report is made but it is certainly
6 not our intention to deprive local governments from
7 protecting their own resources, if they have the authority
8 under local government provisions to do so.

9 DELEGATE HANSON: And so long as this is not in-
10 consistent with State law.

11 DELEGATE BOYER: That is right.

12 DELEGATE HANSON: The second question is, would not
13 the language which you have here make it clear that such
14 acts as might provide historic trusts or provide for the
15 preservation of sites of natural beauty, et cetera, be
16 constitutional?

17 DELEGATE BOYER: We strongly considered the in-
18 clusion of historical sites, and there was a strong senti-
19 ment in the Committee to do so. However, we felt upon
20 four or five afterthoughts and reflections that historical
21 site was probably apropos and worthy of consideration but

1 did not belong in natural resources section. The intent
2 of natural resources was to protect, conserve these mat-
3 ters that nature has created, birds, bees, and flowers, and
4 things of this sort and not historical sites, which seemed
5 to be a different basket of fruit over here. We didn't
6 want to become entangled in our own self-spun cobwebs,
7 where perhaps this whole thing would be cluttered up.

8 THE CHAIRMAN: Delegate Hanson.

9 DELEGATE HANSON: Scenic beauty, then, is con-
10 strued to be in this clause on scenic beauty, natural
11 beauty?

12 DELEGATE BOYER: That is right.

13 DELEGATE HANSON: And not architectural?

14 DELEGATE BOYER: Not manmade.

15 THE CHAIRMAN: Delegate Adkins.

16 DELEGATE ADKINS: I would like to ask the Chair-
17 man if any consideration has been given as to whether or
18 not there is any potential conflict between this provision
19 and the provision relating to taking property without just
20 compensation; more specifically, since the legislature
21 has been mandated to do these various things, would it be

1 possible, for example, for the legislature to take exten-
2 sive scenic easements over existing private property without
3 just compensation?

4 DELEGATE BOYER: I think not, Judge Adkins. We
5 got into this rhubarb and rumble about eminent domain,
6 power of eminent domain, and there were some State Consti-
7 tutions that had it included; and to make a long story
8 short, after long consideraation and discussion about this,
9 certainly our Declaration of Rights somewhere in the Con-
10 stitution includes the prohibition of taking of any property
11 without just compensation; so rather than point it out
12 here about the words "eminent domain" or any problem like
13 that, we thought we would leave it up to the present
14 Constitution.

15 THE CHAIRMAN: Are there any further questions
16 for purposes of clarification? Delegate Adkins.

17 DELEGATE ADKINS: Is it quite clear that the taking
18 of a scenic easement is a taking of property in the sense
19 that the language is used in the Bill of Rights?

20 DELEGATE BOYER: It is clear to me, Judge.

21 THE CHAIRMAN: Delegate Adkins, I might mention that

1 the proposal which will probably be reported by the Com-
2 mittee on Personal Rights provides that no private property
3 shall be taken or damaged for public use.

4 Delegate Hardwicke.

5 DELEGATE HARDWICKE: Mr. Chairman, I wonder if
6 you would clarify whether you intend this to be a mandate to
7 the legislature or whether you really aren't possibly con-
8 sidering this as a policy statement, something to the ef-
9 fect that it shall be the policy of this State that these
10 things shall be done, because I question you, following up
11 the questioning of Delegate Schneider, as to whether or not
12 if the legislature does not act, some kind of action can
13 be taken against them; and since you apparently think not,
14 I wonder if this isn't in the policy area.

15 DELEGATE BOYER: Perhaps I wasn't on the same
16 wavelength with you, Delegate Hardwicke. It certainly is
17 our intention to make this mandatory. The General Assembly
18 shall by law provide, et cetera, I intended to indicate in
19 response to the previous question that there is recourse
20 through the courts should the General Assembly fail and
21 neglect to do so, but it is mandatory.

1 THE CHAIRMAN: Delegate Hardwicke.

2 DELEGATE HARDWICKE: How would you propose that a
3 court would frame the decree to the legislature compelling
4 them to pass legislation of this kind?

5 DELEGATE BOYER: I think you would have to take
6 the case before it, the facts of the case before it. I
7 don't think the court can probably tell the legislature
8 to make any broad catchall mandatory provision by decree.
9 I think that any particular case in which a citizen or
10 a taxpayer felt aggrieved, upon application to the court
11 for recourse, the Court could then, as it has done so many
12 times in reapportionment and other matters, compel the
13 State, the General Assembly to do so.

14 THE CHAIRMAN: Delegate Hardwicke.

15 DELEGATE HARDWICKE: And then if the legislature
16 did not frame/an appropriate piece of legislation, would the
17 court then be empowered to draft legislation as in the
18 case of redistricting or reapportionment?

19 DELEGATE BOYER: This would be a judicial inter-
20 pretation, Delegate Hardwicke. I know the court has in
21 other instances drafted legislation.

1 THE CHAIRMAN: Delegate Hardwicke.

2 DELEGATE HARDWICKE: The court has? You do have
3 instances, Mr. Chairman, where a court has drafted legis-
4 lation providing for such things as conservation?

5 DELEGATE BOYER: Of course, I am referring to the
6 historic case of reapportionment, where the legislation
7 the court felt -- and we are getting off into a far
8 distant natural resource here -- but there was, as I under-
9 stand it, the decree of the court that if the legislature
10 did not do so, if the General Assembly did not do so,
11 the court would; so if they had that authority there, I
12 can see no difference here.

13 THE CHAIRMAN: Delegate L. Taylor.

14 DELEGATE L. TAYLOR: Delegate Boyer, in your
15 recommendation I see that you include the word "environment".
16 Does the word "environment" relate to any degree to the
17 need of human beings?

18 DELEGATE BOYER: No, sir, absolutely not. That
19 was not our intention.

20 DELEGATE L. TAYLOR: In the problems of air and
21 water pollution, what is the primary role of trying to

1 correct water pollution and air pollution?

2 DELEGATE BOYER: The primary what, Delegate Tay-
3 lor?

4 DELEGATE TAYLOR: What are the primary aims of abat-
5 ing water pollution and air pollution?

6 DELEGATE BOYER: The primary aims of abating
7 air and water pollution, it appears to me, would be self-
8 evident, to trying to protect and clear the air and water.

9 THE CHAIRMAN: Delegate Taylor.

10 DELEGATE L. TAYLOR: Would it be for the
11 purpose of human beings or for the purpose of the lower
12 animals?

13 DELEGATE BOYER: Could we include both in that,
14 sir?

15 DELEGATE L. TAYLOR: Yes.

16 DELEGATE BOYER: My answer would be, Both.

17 THE CHAIRMAN: Delegate Taylor.

18 DELEGATE L. TAYLOR: I don't see how you can
19 limit the word "environment" to natural resources and not
20 include the environment of man.

21 DELEGATE BOYER: This consideration we had was for

1 natural resources. There are many other considerations
2 of personal rights that would include social environment.

3 THE CHAIRMAN: Delegate Taylor.

4 DELEGATE L. TAYLOR: I would like to read to you
5 a statement.

6 THE CHAIRMAN: Delegate Taylor, this session is for
7 the purpose of questions only. You will have an opportunity
8 to debate a little later.

9 DELEGATE L. TAYLOR: I wanted him to answer a
10 question in connection with the statement.

11 THE CHAIRMAN: You may proceed.

12 DELEGATE L. TAYLOR: This is an article on air
13 pollution, and it deals with the effect of air pollution on
14 heart disease. It says,

15 "Extreme general air pollution also appears to
16 lead to an increase in deaths from coronary artery disease.
17 So far as I know, there is little or no evidence concern-
18 ing the possibility of an association between coronary
19 artery disease and general air pollution not exceeding the
20 levels ordinarily present in many large cities."
21

1 This article is in a publication put out by Har-
2 vard University, Academy of Arts and Sciences, and it
3 examines the natural resources from the effects that they
4 have on man, and I can't see how you failed to include the
5 human needs and the natural environment.

6 THE CHAIRMAN: What is your question?

7 DELEGATE BOYER: The question is, isn't that so?

8 THE CHAIRMAN: What is the question, Delegate
9 Taylor?

10 DELEGATE L. TAYLOR: My question is, how were you
11 able to exclude the human needs, the needs of man in relation-
12 ship to natural environment, natural resources?

13 DELEGATE BOYER: It was not our intention, nor is it
14 ever the intention to exclude human needs, when it refers
15 to the natural resources and air pollution. I don't know
16 how else to answer your question.

17 THE CHAIRMAN: Delegate Taylor, if the Chair may
18 paraphrase what the Committee Chairman was saying, I
19 think he was saying that the section is intended to refer
20 only to the natural resources, natural environment, natural
21 beauty. He is not saying that that does not take into

1 account the effect of these natural conditions on human
2 beings.

3 DELEGATE BOYER: Thank you, Mr. Chairman.

4 THE CHAIRMAN: Delegate Taylor.

5 DELEGATE L. TAYLOR: From your report, it
6 doesn't include anything about the effects on human beings
7 in terms of the natural environment. Was this intentional
8 or an oversight?

9 DELEGATE BOYER: It was not intentional. In fact,
10 to the contrary, it was deliberately our intention that
11 human needs were included when it refers to air pollution,
12 water pollution and other natural resources.

13 THE CHAIRMAN: Delegate Chabot.

14 DELEGATE CHABOT: Delegate Boyer, your response
15 with regard to whether or not this would forbid the State
16 to put a road through a park suggests a more general ques-
17 tion to me: Is this in any way intended to restrict the
18 General Assembly from taking account of needs not referred
19 to here, human needs, various needs, when those needs may
20 come in conflict with some of the matters referred to here?

21 DELEGATE BOYER: May I ask you to define what you

1 mean by human needs?

2 DELEGATE CHABOT: Let's take the need for a road
3 at a particular place.

4 DELEGATE BOYER: The answer to that would be No.
5 It is not our intention to restrict the General Assembly
6 action there.

7 THE CHAIRMAN: Delegate Chabot.

8 DELEGATE CHABOT: Any of the other matters that
9 some of the people here have referred to, such as the en-
10 vironmental needs of people in the cities and the concern of
11 human beings with regard to air and water pollution should
12 require the taking of some action which might, at least
13 in a short range point of view, seem to conflict with
14 this provision, the General Assembly, I gather would not be
15 forbidden to take those other needs into consideration?

16 DELEGATE BOYER: No.

17 DELEGATE CHABOT: The General Assembly under those
18 circumstances would be permitted to go contrary to the
19 provisions here, if human needs were paramount?

20 DELEGATE BOYER: Your assumption is our intention.

21 THE CHAIRMAN: Delegate Koss.

1 DELEGATE KOSS: Delegate Boyer, I am having
2 some problems understanding the extent to which this law
3 could apply. I understand that the birds, bees, the
4 flowers, and the air are not owned by any one of us. To
5 what extent could this law apply to private property and
6 at what point would this mandate take precedence over
7 economic considerations in terms of, say, conservation of
8 trees or fish or anything else like that?

9 DELEGATE BOYER: Delegate Koss, I think it would
10 be rash or brash of me to make a broad statement as to what
11 extent this effect or the conflict might arise. It appears
12 to me that you would almost have to look on a case-by-case
13 basis and determine what is going to be the best for the
14 most and what is going to be for the public good when it
15 comes to the area of conservation.

16 THE CHAIRMAN: Delegate Koss.

17 DELEGATE KOSS: Well, would this authorize, for
18 instance, the General Assembly to pay damages or reimburse-
19 ment to any individual who felt that his economic interests
20 were aggrieved by the operation of a conservation measure?

21 DELEGATE BOYER: I think Judge Adkins raised a

1 similar allied question, and my answer there was that it
2 is never our intention to take any property or damage
3 anyone's property without just compensation, and knowing t
4 the Personal Rights provision was going to include some-
5 thing about just compensation, we felt we would not spell
6 out in detail that problem here.

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1 THE CHAIRMAN: Delegate Hanson.

2 DELEGATE HANSON: I think I have communicated
3 my problem to Delegate Boyer. Let me ask it, though, for
4 the record: Is it not true, Delegate Boyer, that in
5 the reapportionment cases that mandamus was not issued against
6 the legislature, but rather injunctions against administra-
7 tive officials?

8 DELEGATE BOYER: Injunctions, yes, and threats
9 of further action if the legislature did not act, which
10 they did.

11 DELEGATE HANSON: But my point, however, being
12 that is it not true that in these cases the court did not
13 find, or the courts have not found that they could mandamus
14 the legislature to act in such an area?

15 DELEGATE BOYER: In such an area, you are talking
16 about other vital natural resources of reapportionment?

17 DELEGATE HANSON: Let me ask the question more
18 broadly. Has your committee come upon any
19 instance in which a State court has mandamus a State legis-
20 lature to do anything?

21 DELEGATE BOYER: We didn't research that legal

1 question of whether any State court has ever mandamus-
2 any State legislature to do anything. I don't know.

3 THE CHAIRMAN: Delegate Pullen.

4 DELEGATE PULLEN: Mr. Chairman, do these legalis-
5 tic questions mean that the legislature does not have to do
6 anything that the Constitution directs, that it is above
7 the Constitution?

8 I think this is a very broad implication, and
9 it kind of disturbs me.

10 DELEGATE BOYER: Yes, sir.

11 As you know, in some of the sections that we
12 have passed previous to this we say that the General Assembly
13 may do thus and so. This is very mandatory, Dr. Pullen,
14 and says that the General Assembly shall, and it is our
15 intention that the General Assembly shall, without any hanky-
16 panky about it.

17 It is our intention that if the General Assembly
18 should fail or neglect to mandatorily and positively,
19 affirmatively act, then there will be recourse to judicial
20 interpretation.

21 THE CHAIRMAN: Delegate Pullen.

1 DELEGATE PULLEN: To carry that a little further.
2 Mr. Chairman, suppose the Constitution required judiciary
3 reform and the legislature fails to carry that out? Then
4 where do you go?

5 DELEGATE BOYER: Dr. Pullen, my only answer
6 would be the same as I have given. Like in any instance
7 where there is non-conformance or mal-conformance on the
8 part of any branch of government, be it legislative or
9 executive, that the courts are your ultimate resort upon
10 which you can rely to compel such action.

11 THE CHAIRMAN: Delegate Pullen, if the Chair
12 might make an observation, I think there are certain matters
13 that the three coordinated branches of government cannot
14 be compelled to do or not to do by another coordinate
15 branch of government and the ultimate power in that is the
16 power of the ballot.

17 Delegate Mentzer.

18 DELEGATE MENTZER: Mr. Chairman, I believe you
19 said that Hawaii was one of the States which had such
20 a clause, and I understand that one result is that they
21 have no billboards in the countryside in Hawaii.

1 Much as I might be in sympathy with this for Maryland, are
2 we not inviting trouble if we have suits saying that the
3 legislation to control billboards did not go far enough?
4 This particular instance of billboards, was that discussed
5 by your committee?

6 DELEGATE BOYER: No. The matter of billboards
7 is very interesting. As I understand it, in Hawaii a group of
8 interested citizens went out with their own time and money
9 and purchased all the billboard signs that were on the
10 landscape of Hawaii. When they finally bought the last
11 block of billboards, they then approached the General
12 Assembly, or the Constitutional Convention out there, and
13 had built into the Constitution the prohibition against
14 any further billboards; but this was done as a civic duty
15 by an interested civic group to trigger and initiate the
16 prohibition of billboards. We did not consider billboards
17 per se in our committee, but certainly I think Mrs. Lyndon
18 Johnson, as part of her beautification program probably
19 considers this as part of the scenic beauty, the prohibi-
20 tion against billboards in the interests of conservation.

21 THE CHAIRMAN: Delegate Bennett.

1 DELEGATE BENNETT: Delegate Boyer, did your
2 committee give any consideration to putting at least part
3 of this in the positive and restricting the legislature
4 from selling any public lands or utilizing any public
5 lands dedicated for park purposes for anything else
6 other than it was originally used for?

7 DELEGATE BOYER: No, sir, we did not consider
8 that.

9 DELEGATE BENNETT: That would be feasible, would
10 it not, and at least preserve what we have got?

11 DELEGATE BOYER: I imagine anything is feasible,
12 Delegate Bennett. We just thought that the best protection
13 that we could give the citizens of the State in response
14 to the many, many intensely interested people who came down,
15 witnesses, to testify, would be this compulsive, affirma-
16 tive action by the General Assembly, that they shall do
17 as the recommendation provides.

18 THE CHAIRMAN: Delegate Bennett.

19 DELEGATE BENNETT: We should renew this when
20 we enter the legislature. We will see this thing through,
21 won't we?

1 DELEGATE BOYER: I am afraid I will be no
2 longer in the legislature.

3 THE CHAIRMAN: Delegate Willoner.

4 DELEGATE WILLONER: You have indicated this is a
5 self-executing provision. I would like, if you
6 would, to give us an example of how you would envision
7 this provision being enforced by the courts, if you could
8 give us a for-instance.

9 DELEGATE BOYER: Yes, sir.

10 Since the Constitution has prescribed the salary,
11 the court went on to say in the case here that the people
12 had directed the payment of that salary, and if the appro-
13 priate voucher had been submitted, the Treasurer had a
14 ministerial duty to pay it. This would seem to imply
15 if an unfilled Constitutional mandate on the legislature
16 can be followed by some other State official without
17 legislative action, the courts might compel that State
18 official to act, or the General Assembly.

19 DELEGATE WILLONER: I understand the concept
20 of mandamus in a specific area. Let's take, for example,
21 the wetlands. Assuming a private developer started to

1 drain our wetlands and develop a resort community, at that
2 point could we sue the developer and enjoin his development
3 on the basis that the legislature failed to protect that
4 particular wetland?

5 DELEGATE BOYER: Could we sue -- you mean an
6 interested taxpayer -- sue who?

7 DELEGATE WILLONER: Could the interested tax-
8 payer enjoin the developer from developing the land on the
9 basis that the taxpayer failed to carry out the mandate of
10 the Constitution?

11 DELEGATE BOYER: There is not a thing to prevent
12 any aggrieved taxpayer from filing a suit against anybody?

13 DELEGATE WILLONER: Isn't this an entirely new
14 concept of law?

15 DELEGATE BOYER: If it is, I think it is a good
16 one.

17 DELEGATE HICKMAN: Mr. Chairman.

18 THE CHAIRMAN: Delegate Hickman.

19 DELEGATE HICKMAN: Mr. Boyer, to what degree,
20 or how extensively in this field do you think the legis-
21 lature would have to go each year to meet the requirements

1 of this particular provision? Could they do one-fourth
2 as much as they are doing now and meet the requirements?

3 DELEGATE BOYER: That is a matter of relative
4 degree, I think, Delegate Hickman. I think the answer
5 would be they would have to go to the degree that public
6 interest demands.

7 THE CHAIRMAN: Are there any further questions?

8 DELEGATE BOYER: That would differ with various
9 situations.

10 THE CHAIRMAN: Delegate Groh:

11 DELEGATE GROH: Delegate Boyer, was it the
12 intention of the committee to broaden or extend
13 the scope of the police power; in other words, create
14 another area besides health, welfare, et cetera?

15 DELEGATE BOYER: No, Delegate Groh. Our sole
16 intention was to provide natural protection, protection
17 for natural resources.

18 THE CHAIRMAN: Are there any further questions
19 for purposes of clarification?

20 Delegate Boyer, the last answer leaves me in
21 some confusion as a result of an earlier answer.

1 I thought you had said earlier in response to
2 questions from Delegate Taylor that the purpose of conser-
3 vation of natural resources, natural environment and natural
4 scenic beauty was for the citizens of the State, and I
5 understood you to be saying perhaps to the contrary in your
6 answer to Delegate Groh. Could you clear that up for us?

7 DELEGATE BOYER: Yes, sir.

8 Our answer to Delegate Taylor was our answer
9 of the committee. Delegate Groh got into another
10 field about the extension of police power. In my answer
11 to Delegate Taylor/^{it}inevitably follows that police power is
12 extended, and to that extent I would have to agree with
13 Delegate Groh; but we did not get into the extension of
14 police power, per se. We were considering solely the pro-
15 tection of our natural resources as opposed to manmade
16 resources.

17 THE CHAIRMAN: I understood Delegate Groh's
18 question was whether or not you were intending protection
19 of natural resources for public health, safety, and welfare.

20 Wasn't that your question, Delegate Groh?

21 DELEGATE GROH: Yes, sir.

1 THE CHAIRMAN: Is that the purpose of the
2 conservation article?

3 DELEGATE BOYER: No, sir. The purpose is for the
4 protection of natural resources, and if it follows then, by
5 court interpretation or matters that might acquire and
6 accumulate in the next hundred years, if it then follows
7 that police protection is expanded, it would be inevitable
8 that it would have to; but we did not, per se, get into the
9 area of police protection.

10 There are many rules for success, but only one
11 rule for failure, and that is trying to please everybody;
12 and sometimes this is very difficult.

13 THE CHAIRMAN: Any further questions for purposes
14 of clarification?

15 The Chair has one further question. This may
16 possibly arise with the Committee on Style. That is the
17 only reason I ask it: Am I correct in assuming that re-
18 gardless of what, under the new Constitution, may be the
19 authority of local subdivisions in the area embraced by
20 this article, it is the intention of your committee to
21 affirm the fact that the General Assembly shall have

1 authority with respect to the matters mentioned in this
2 section?

3 DELEGATE BOYER: Absolutely, sir.

4 THE CHAIRMAN: Are there any further questions
5 for purposes of clarification?

6 If not, we will proceed to debate.

7 DELEGATE BOYER: Thank you, Mr. Chairman.

8 THE CHAIRMAN: The question arises on the
9 approval of Committee Recommendation No. GP-3. It is
10 now open for amendment. Are there any amendments?

11 (There was no response.)

12 THE CHAIRMAN: If there are no amendments, the
13 approval of Committee Recommendation No. GP-3 -- Delegate
14 Hardwicke?

15 DELEGATE HARDWICKE: Mr. Chairman, I would
16 like, or I am in the process of preparing an amendment.
17 I understand it is being prepared at this moment. I am in
18 sympathy with what the Committee on General Provisions is
19 trying to do here, but I think that I can't agree with
20 the answers that were given by the chairman with regard to
21 court action arising to compel the legislature to enact
legislation; and in the absence of the

1 legislature enacting such legislation, then the court
2 preparing such legislation. It seems to me that that
3 is bad policy, and a very unfortunate precedent, should that
4 prevail.

5 THE CHAIRMAN: May I interrupt you? What is the
6 status of your amendment at the moment?

7 DELEGATE HARDWICKE: It is being prepared,
8 Mr. Chairman, and it would make it clear that this is a
9 matter of policy, not a matter of law.

10 THE CHAIRMAN: Could you state, so that I
11 can consider the matter, what the nature of the amendment
12 would be?

13 DELEGATE HARDWICKE: Yes, sir.

14 It would state, it shall be the policy of
15 this State that the State government shall, by appropriate
16 action, conserve, enhance, improve and protect the
17 natural resources and environment, and scenic beauty of
18 the State.

19 THE CHAIRMAN: Under the rule we cannot act
20 on the amendment until it is printed and ready.

21 I would suggest to the Committee of the Whole

1 that we would save time, if there were no objection,
2 to proceed to a discussion of the amendment, with the under-
3 standing that we would not act on it until it is actually
4 on your desk. Is there any objection to that procedure?

5 In the absence of objection, the Chair will
6 recognize Delegate Hardwicke for the purpose of discussing
7 his proposed amendment, with the understanding that we will
8 not act on it until it is printed and before us.

9 I understand that the amendment is actually
10 in the process of being printed now?

11 DELEGATE HARDWICKE: Yes, Your Honor.

12 THE CHAIRMAN: You may proceed, Delegate Hard-
13 wicke.

14 DELEGATE HARDWICKE: I can repeat it very
15 slowly so the members of the Committee can interlineate,
16 if they so desire.

17 In line 8 the recommendation would read: "It
18 shall be the policy of this State that the State government
19 shall, by appropriate action, conserve, enhance, improve and
20 protect the natural resources and environment, and scenic
21 beauty of the State."

1 THE CHAIRMAN: May I state it as I have it?
2 This is a substitute, I take it, for lines 8, 9, 10 and
3 11. "It shall be the policy of this State that the State
4 government shall, by appropriate action, conserve, enhance,
5 and protect the natural resources and environment, and
6 scenic beauty of the State."

7 Is that correct?

8 DELEGATE HARDWICKE: Yes, Mr. Chairman.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Hardwicke to speak to the amendment.

11 DELEGATE HARDWICKE: Mr. Chairman, Members of
12 the Committee:

13 It seems to me that if the Chairman of the
14 Committee on General Provisions had considered this to be
15 a policy matter, I certainly would go along with him, but
16 now we have written into the record of this Convention that
17 the committee considers that it is a mandate to the legis-
18 lature, which if the legislature does not act upon it, the
19 court can frame legislation.

20 Now, I think that members of this Committee,
21 of this Convention, should take a rather dim view of

1 courts enacting legislation, and it seems to me that
2 what was really meant, or what ought to be meant is that
3 this is a matter of policy, and it is a matter of policy
4 both in the executive branch of the government and in the
5 legislative branch of the government.

6 For that reason, in my amendment I have
7 suggested the language, the State government shall,
8 which leaves it open to either the executive or the legis-
9 lative branch, and the phraseology, appropriate action,
10 again leaves it a matter of time in the remedy that is sought
11 so that there is maximum flexibility in the policy statement.

12 Now, it is true, it doesn't go very far with
13 regard to compelling action, but I don't think we can go
14 very far. I think that all that we can do is to frame
15 a declaration of principle in this area, and that is what
16 I have sought to do in my amendment; and I hope that this
17 amendment would be favorably acted upon, Mr. Chairman, and
18 Members of the Committee.

19 THE CHAIRMAN: Does anyone desire to speak in
20 opposition to the proposed amendment?

21 Delegate Scanlan.

1 DELEGATE SCANLAN: I speak in opposition to
2 Delegate Hardwicke's amendment, though I have some sympathy
3 for his attempt to clarify what became unclear, I believe,
4 in the previous discussion.

5 I am against both his amendment and the original
6 proposal.

7 I believe in either case they are merely exhor-
8 tations. They do not rise to the level of Constitutional
9 principles.

10 Now, there are other exhortations equally
11 noble in their motive and in their aim that perhaps might
12 be considered. Some might urge that we put in a statement
13 or exhortation that the legislature shall guarantee decent
14 housing. I would think that that would have a higher claim
15 to the attention of this body than the one now before you.
16 But my point is, no matter how noble the aspirations or the
17 exhortations that the various groups have -- and I certainly
18 sympathize with the conservationists, and I hope that every-
19 thing they aspire to in this statement is ultimately done
20 by the legislature of this state -- but I don't believe the
21 exhortation to that effect has any place in the Constitution.

1 You can look at the old Constitution and see
2 exhortations, the one in which the legislature was exhorted
3 to guarantee the purity of the election laws. I suggest
4 that the presence of that or the absence of that exhortation
5 had no effect whatsoever on the ultimate involvement of the
6 present Corrupt Practices Act.

7 In their own way these statements of principles,
8 these directions to the legislature that "thou shall",
9 they are almost as insulting as some of the "thou shall
10 not's" that from time to time we suggest be laid upon the
11 legislature.

12 There is no question that the legislature under
13 the expanding judicial interpretation of the general welfare
14 has the power to do everything that they are exhorted to do
15 in this statement.

16 As for the question of judicial enforcement, I
17 think it is perfectly clear that there would be no court
18 in this State or in any State that would ever have the
19 power to force the legislature to pass a law, which I
20 gather was somewhat implied in some of the discussion that
21 preceded the introduction of Delegate Hardwicke's amendment,

1 and on that point I certainly agree with his interpretation
2 of the law, and certainly agree that Mr. Hanson pointed
3 out the significant differences in the reapportionment
4 cases.

5 The courts had struck down cases as unconstitu-
6 tional, and there was a void, and if the void hadn't been
7 filled by legislative action as a temporary expedient,
8 under the equity powers the court could have acted. That
9 is a far different thing from suggesting that a court of
10 this State, and a dangerous thing, a court of this State
11 could force a legislature to pass a particular law in order
12 to carry out a platitude or statement of policy or aspira-
13 tion.

14 I think if we fail all along the line, if we don't
15 come out with a decent judicial article, local government,
16 legislative, article, but yet go home having trimmed our
17 Constitution and modernized it, eliminated some of the
18 platitudes that permeate it, at least we will have done
19 something. But I think if we admit at this stage that
20 this type of provision has an appropriate place in our
21 Constitution you are opening the doors to the ones that

1 stand back of it.

2 There is one on the very next page, protection
3 for consumer information, and a good argument could be made
4 that the city voters are entitled to have that statement
5 of policy placed in the Constitution, an argument that
6 could stand on equally firm ground with the argument of
7 the conservationists.

8 Next week the farmers will be in here with a
9 statement of policy for the protection of agricultural land.
10 We have seen others coming in with a statement of an
11 economic bill of rights. For goodness sakes, we are draft-
12 ing a Constitution, not laying out the principles of
13 the new social order. And no matter how enlightened and
14 noble those aspirations may be, whether they be as noble
15 as those of St. Augustine's City of God or
16 Aldous Huxley's A Brave New World, they have no place
17 in the Constitution. Please keep them out.

18 THE CHAIRMAN: Any other delegate desire to
19 speak in favor of the amendment?

20 Delegate Storm.

21 DELEGATE STORM: Mr. Chairman, it seems to me

1 that there is one thing that maybe Delegate Scanlan has
2 overlooked. In putting in "The General Assembly shall,
3 provided by law," et cetera, I think this makes it a little
4 simpler for the General Assembly to retain and have the power
5 to enact local legislation regarding conservation; and there
6 are so many sections of the State that will require more or
7 less local legislation in reference to conservation, because
8 I think there is a difference in duck season within one
9 section of the State and another.

10 America in Miniature is so different that I
11 think some of the conservation of natural resources has to
12 be protected by the General Assembly, rather than parcelled
13 out. And some of the local government people may be able
14 to tell me whether or not my thinking on this is correct.

15 In addition, Delegate Hardwicke's suggestion,
16 I am certainly sympathetic with him, his suggestion
17 that it shall be the policy of the State government it seems
18 to me broadens the power to include even the judiciary,
19 which appears most of the time to be part of the State
20 government; and it seems to me it would give them the power,
21 more power than they now have.

1 So I speak in favor of the committee's recommendation, and
2 urge everyone to support it.

3 THE CHAIRMAN: Any delegate desire to speak in
4 opposition?

5 Delegate Gleason, do you desire to oppose the
6 amendment?

7 DELEGATE GLEASON: Mr. Chairman, I have concern
8 that the pending amendment to the committee report would
9 have just the reverse effect that the delegate envisages for
10 it, because if this power is granted to the State, it seems
11 to me that any citizen can go into a court with an injunc-
12 tive process and challenge any action of any board or any
13 agency of the State government if such a law does not meet
14 the criteria established within the proposed amendment.

15 I see, frankly, nothing wrong with the committee
16 amendment in this respect.

17 Delegate Scanlan has pointed out that there is
18 in the existing Constitution a provision that the General
19 Assembly shall pass laws necessary for the preservation of
20 the purity of elections. I don't know, and I don't think he
21 does, whether the Corrupt Practices Law relates to that basic

1 power, but we are dealing here, unlike the Federal Consti-
2 tution, we are dealing with basic values within a State, where
3 in the Federal Constitution, although the Congress has the
4 power to do a lot of things, it is not mandated to do cer-
5 tain things.

6 Here we are dealing with a different area, and
7 here I think the committee is dealing with the most basic
8 area that we could deal with, and that is the preservation
9 of our natural environment, our natural assets and values.
10 Unless we preserve these in some respect -- and it is no
11 answer to say there is no enforceable remedy, that mandate
12 is there. If the General Assembly does not carry out the
13 mandate, it seems to me, as the chairman of this committee
14 has pointed out, the final resolve to overturn that lack of
15 responsibility is in the electorate. So I do hope that
16 this amendment is defeated, and I hope the committee
17 amendment is approved.

18 THE CHAIRMAN: Delegate Gallagher, do you desire
19 to speak in favor of the amendment?

20 DELEGATE GALLAGHER: Mr. Chairman, at the
21 appropriate time I would ask Mr. Scanlan to yield for a

1 question.

2 THE CHAIRMAN: This is not the appropriate time.

3 Is there any other delegate who desires to
4 speak in favor of the amendment?

5 Delegate Willoner, do you desire to speak in
6 favor?

7 DELEGATE WILLONER: I would like to ask a
8 couple of questions of Delegate Hardwick if I could, very
9 short ones.

10 THE CHAIRMAN: You may.

11 Does Delegate Hardwicke yield for a question?

12 DELEGATE HARDWICKE: I yield, Mr. Chairman.

13 DELEGATE WILLONER: Delegate Hardwicke, is
14 this meant to pre-empt the local governments from taking
15 measures in this area?

16 DELEGATE HARDWICKE: No, it is not.

17 DELEGATE WILLONER: The second question was,
18 did you leave out the word "improve"? When the Chairman
19 read it he did not read "improve."

20 DELEGATE HARDWICKE: No. I intended that all
21 of the nouns be made verbs; that is, conserve, enhance,

1 improve and protect.

2 DELEGATE WILLONER: Thank you.

3 THE CHAIRMAN: You are quite correct, that
4 as I read it I did not include the word improve. I under-
5 stand that it is to be included, Delegate Hardwicke?

6 DELEGATE HARDWICKE: Yes, Mr. Chairman.

7 THE CHAIRMAN: Delegate James, for what purpose
8 do you rise?

9 DELEGATE JAMES: Would Delegate Hardwicke
10 yield to another question?

11 THE CHAIRMAN: Delegate Hardwicke, do you yield
12 to another question?

13 DELEGATE HARDWICKE: Yes, sir.

14 DELEGATE JAMES: The use of the term, state
15 government, would you mind substituting General Assembly
16 for the words state government, or do you still insist
17 upon that word?

18 THE CHAIRMAN: Delegate Hardwicke?

19 DELEGATE HARDWICKE: Delegate James, I seriously
20 intended that all branches of the government be empowered
21 to do whatever was appropriate in this area, including the

1 General Assembly.

2 THE CHAIRMAN: Delegate James.

3 DELEGATE JAMES: Would this give independent
4 Constitutional authority really over and above what the
5 policies of the legislature may adopt?

6 THE CHAIRMAN: Delegate Hardwicke?

7 DELEGATE HARDWICKE: Conceivably it could.

8 THE CHAIRMAN: Delegate James.

9 DELEGATE JAMES: I don't want to ask any more
10 questions. I have my opinion now.

11 THE CHAIRMAN: Does any delegate desire to
12 speak in opposition?

13 Delegate Wheatley?

14 DELEGATE WHEATLEY: Mr. Chairman, I have
15 a question also for Delegate Hardwicke.

16 THE CHAIRMAN: Do you yield to a question,
17 Delegate Hardwicke?

18 DELEGATE HARDWICKE: Yes, Mr. Chairman.

19 THE CHAIRMAN: Delegate Wheatley.

20 DELEGATE WHEATLEY: My concern is not so much
21 the substance of the amendment, but the basis on which we

1 are deciding.

2 I would pose the question to Delegate Hardwicke
3 based on his earlier statements, that we are not dealing
4 with something that can be interpreted by courts, and this
5 question was raised in the committee, as to what would be
6 the effect in any instance where the Constitution spoke
7 in a mandatory sense. And I am referring now to one
8 illustration, the draft Constitution Recommendation in
9 section 5.12; that is not under discussion, and therefore
10 I don't think would bother anyone: The State shall be
11 divided by law into circuits of the Supreme Court and into
12 circuits of the appellate courts.

13 If the legislature failed to do this, what re-
14 course would you think there would be?

15 THE CHAIRMAN: Delegate Hardwicke.

16 DELEGATE HARDWICKE: I think that you are rais-
17 ing a very important question, and I think that we are
18 going to have more of this problem as we go along in
19 this Convention and this Committee, Delegate Wheatley.

20 I must confess that I have had a change of
21 philosophy myself since coming to this Convention.

1 At the outset I felt that it would be appropriate for
2 the Constitution to mandate almost anything and any type
3 of legislation to the legislature, and that it would be
4 appropriate to include it in the Constitution. However,
5 upon consideration of a number of very specific items, it
6 occurs to me that there is a type of legislation which
7 involves such a wide area of discretion in the legislative
8 body that it is almost impossible to mandate the enactment
9 of such legislation to the legislature.

10 In other words, it occurs to me that when you are
11 talking about conservation, enhancement, improvement, pro-
12 tection of natural resources, that there is such a tremendous
13 latitude of discretion to the legislature to determine how
14 best to protect, to the extent to protect, and those
15 things which I can't see a court substituting its judgment
16 for.

17 For that reason, Delegate Wheatley, I think
18 that this kind of legislation and the matter before us
19 involves such a broad latitude of legislative discretion
20 that I do not think it is appropriate to mandate to the
21 legislature.

1 However, I don't think that we have the same considerations
2 in redistricting judicial districts and that kind of thing,
3 because there, although there is a certain amount of
4 legislative discretion also, you still have certain prin-
5 ciples which are more inviolate in nature. You have your
6 one-man/one-vote principle, which the Supreme Court has
7 said is the prime consideration. In judicial districts,
8 for example, I can see much firmer areas of demarkation,
9 much less judicial, or much more judicial area than legis-
10 lative discretion. So in answer to the question, this is
11 an awfully long-winded answer, I think that we can mandate
12 where there is a minimum of legislative discretion.
13 I think we should not mandate where there is a great deal
14 of legislative discretion.

15 THE CHAIRMAN: Delegate Wheatley.

16 DELEGATE WHEATLEY: If I might ask one further
17 question, to follow this up --

18 THE CHAIRMAN: Do you yield for a question?

19 DELEGATE HARDWICKE: Yes.

20 DELEGATE WHEATLEY: If I am wrong, correct me.
21 You are saying there are areas where the court may mandate

1 if the legislature fails to act, providing there is a
2 specific degree of clarity in detail?

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1 DELEGATE HARDWICKE: Well, Delegate Wheatley,
2 your proviso is not quite the one that I would put down.
3 I would say that the court can act for the legislature
4 in the absence of the legislature acting for itself, if
5 there are objective principles which can be arrived at
6 which the court can by its judgment implement.

7 DELEGATE WHEATLEY: One further question.

8 THE CHAIRMAN: Delegate Wheatley.

9 DELEGATE WHEATLEY: To frame the hypothetical
10 again then, if the provision said that the General
11 Assembly shall pass such laws as shall be necessary to
12 insure clean air for the residents of the State of Mary-
13 land, as determined by health authorities, you would feel
14 this would be the type that could be mandated by a court?

15 THE CHAIRMAN: Delegate Hardwicke?

16 DELEGATE HARDWICKE: No, Delegate Wheatley,
17 because I think that clean air and these concepts are far
18 too fluid to admit of any judicial standards.

19 DELEGATE WHEATLEY: Thank you, Mr. Chairman.

20 THE CHAIRMAN: The Chair recognizes Delegate
21 Boyer to speak in opposition to the amendment.

1 DELEGATE BOYER: Mr. Chairman, I would have to
2 speak in opposition to the amendment.

3 In response to Delegate James' question, the
4 sponsor indicated it was his deliberate intention to put
5 this power solely in the hands of the General Assembly;
6 that it was his intention to also give the restrictive
7 powers to the Executive Branch.

8 It appears to me that this would create quite
9 a hiatus. It could lead to a lot of buck-passing be-
10 tween the Executive and the Legislative Branch. It could
11 lead to a lot of overlapping and duplication, and it
12 seems to me that this would create a sense of lack of
13 responsibility to whom the people could look to for
14 guidance.

15 It also appears to me that the first several
16 words of the amendment saying that it shall be the
17 policy of this state dilutes the intent of the committee.

18 We deliberately chose the words, after long
19 hours and hearing from many witnesses, who are intensely
20 interested in conservation. We deliberately chose the
21 words, the General Assembly shall provide by law, because

1 this seemed to be consistent with the other matters that
2 had thus far been submitted to this Convention, and to
3 the best of our knowledge and information would be con-
4 tinued to be submitted in this form. To now say that it
5 shall be the policy of the state to do thus and so
6 would be inconsistent with what had gone before and what
7 we thought might come hereafter.

8 Your committee deliberately considered and
9 deliberately chose the words, that the General Assembly
10 shall provide by law. We would prefer it this way,
11 from the expert testimony given us, and I would have to
12 oppose any change as suggested by the amendment.

13 THE CHAIRMAN: Does any delegate desire to
14 speak in favor of the amendment?

15 Delegate Bennett?

16 DELEGATE BENNETT: Mr. Chairman, I would think
17 that this proviso would give a great deal of protection
18 to the public and to the preservation of natural resources
19 because it would enable a taxpayer or citizen to go into
20 court and enjoin action by the Public Roads Department,
21 for instance, that would plan a road that would require

1 the cutting down of the Wye Oak, for instance, or other-
2 wise take over certain public lands.

3 This as it is phrased here, it seems to me
4 that that could be done by a citizen, and to that end
5 I would support it. I think in addition to that, just
6 as the Congress, the Constitution of the United States
7 provides such things as the Congress shall provide for
8 the common defense, possible offices and possible roads,
9 et cetera, that we can mandate the legislature this way
10 and we would have sort of a double-barreled amendment
11 here that I think should be approved.

12 THE CHAIRMAN: Before recognizing anyone else
13 to speak, I understand the amendment is printed and
14 circulated. I will ask the clerk to read it. It will
15 be marked Amendment No. 1.

16 MR. QUILLEN: Amendment No. 1 to Committee
17 Referendum No. GP-3 by Delegate Hardwicke: Strike out
18 lines 8 through 11 and substitute in lieu thereof the
19 following:

20 "It shall be the policy of this State that
21 the state government shall, by appropriate action,

1 conserve, enhance, improve and protect the natural re-
2 sources and environment, and scenic beauty of the State."

3 THE CHAIRMAN: Since we have a pause for a
4 moment, the Chair would like to announce that this morning
5 we had with us some students from Chestertown High School
6 in Kent County, and I understand there are now in the
7 gallery some students from Western High School in Balti-
8 more City. We are delighted to have them here.

9 (Applause.)

10 THE CHAIRMAN: Delegate Carson, do you desire
11 to speak in favor or in opposition?

12 DELEGATE CARSON: In opposition.

13 THE CHAIRMAN: The Chair recognizes Delegate
14 Carson to speak in opposition to the amendment.

15 DELEGATE CARSON: I rise in opposition to the
16 amendment, and at the same time I will state that I will
17 support the Committee Recommendation.

18 At the present time under Maryland law, Article
19 66 (c) dealing with conservation of natural resources
20 broadly comprises about 1/15 of the laws in this state
21 in the Annotated Code of Maryland.

1 Your Local Government Committee has realized
2 this and it has been a consideration of the Local Govern-
3 ment Committee that perhaps our restriction against public
4 local laws and requiring the General Assembly to act
5 only by public general law may possibly affect Article
6 66 (c), because Article 66 (c) realizes what we all
7 know, that there is a species of deer in Worcester
8 County that does not exist in Garrett; that there are
9 turkeys in Garrett which do not exist in Worcester, that
10 soil conditions on the Western Shore different from
11 those on the Eastern, and therefore, when the state has
12 in the past treated with regard to natural resources
13 and conservation, it has done so area by area, in many
14 facets of the law, because it necessarily had to do so.

15 This is not an argument in favor of public
16 local laws. It is merely a recognition that the state
17 varies by geography, by content of species of game,
18 fish and other wildlife, and also of the flowers and
19 trees within it and of the streams and rivers.

20 I think the committee's recommendation is wise
21 in providing that the General Assembly shall provide by

1 law, and this means that the General Assembly could
2 continue to treat these areas as it has, and I think as
3 it desirably has in the past.

4 So far as the desirability of stating it in the
5 Constitution, I think it is desirable. I can recall
6 myself when as a young boy growing up on the Susquehanna
7 Flats of Maryland we could shoot canvasback ducks, we
8 could catch rockfish. We cannot any longer, because in
9 the main they are not there, and I think there is no
10 more important area other than human resources to be
11 dealt with, and I think this should be dealt with.

12 THE CHAIRMAN: Does any other delegate desire
13 to speak in favor of the amendment?

14 Delegate Chabot?

15 DELEGATE CHABOT: I would like to ask Delegate
16 Hardwicke a question.

17 THE CHAIRMAN: Delegate Hardwicke is not here.
18 Delegate Hardwicke, would you yield for a
19 question?

20 DELEGATE HARDWICKE: Yes, Mr. Chairman.

21 THE CHAIRMAN: Delegate Chabot.

1 DELEGATE CHABOT: Your answer to the question
2 posed by Delegate James confused me a bit. Did you mean
3 that under this provision the governor would have con-
4 stitutional powers that he might otherwise not have, or
5 did you mean simply that he have obligations to act,
6 using the constitutional powers that are given to him
7 elsewhere?

8 DELEGATE HARDWICKE: Delegate Chabot I did not
9 intend and this is also in response to Delegate
10 James' question, I did not intend that additional powers
11 be given to any branch of the government, particularly
12 to the Executive. I did intend the Executive and the
13 General Assembly would have obligations.

14 DELEGATE CHABOT: Thank you.

15 THE CHAIRMAN: Delegate Burgess, for what pur-
16 pose do you rise?

17 DELEGATE BURGESS: In opposition to the amend-
18 ment.

19 THE CHAIRMAN: The Chair recognizes Delegate
20 Burgess to speak in opposition to the amendment.

21 DELEGATE BURGESS: I cannot speak strongly

1 enough against this statement of policy in the Consti-
2 tution. I submit to you that there is at the present
3 time a certain policy to the same general effect, and I
4 also submit to you that it has very little actual effect.

5 We have presently in this area of water pollu-
6 tion and the representatives of such things as I recall
7 it, the Water Resources Commission and other such
8 devices of the state, which/^{for}theoretical purposes is to
9 protect the same things we talk about here, that is the
10 clean water in the state, hopefully the air in the state.
11 We also apply it to such things as the Maryland State
12 Health Department for redress in these things, but in
13 my experience in Prince Georges County, I have the problem
14 here of dealing with what was referred to, when we were
15 talking about the mass rising of quiet desperation,
16 people that own land along the Potomac, in spite of all
17 the lofty ideals recited those waters are becoming
18 tree-lined sewers, and I use the term advisedly.

19 We tried to oppose some of these things at
20 their inception. It does not work. I am here to tell
21 you. I would say to you if we do not look into this

1 problem, if we do not make as strong an admonition in
2 this Constitution as we can, we will not need the
3 things we are concerned with here because we will not
4 have people around to be concerned with.

5 All of this discussion of 1984 may be reality
6 by necessity. We will not have U topia. We will have
7 a fight to stay alive.

8 I had the misfortune, or good fortune if you
9 will, to be a vice chairman of a committee of the Federal
10 Bar Association that dealt with mines, minerals and
11 natural resources. Ladies and gentlemen, Harry Taylor's
12 reference to insomina is a good one. When you hear those
13 knowledgeable speakers you realize what a problem this is.
14 We are talking about an element of survival, not about
15 trees and birds and the rest. Those are nice and
16 desirable, but I say to you if we are going to have
17 society as we know it, we are going to live healthy,
18 productive lives, we had better wake up to the reality
19 of the situation; not wait until it is too late.

20 If we have to put police powers in the Consti-
21 tution to accomplish it, so be it, the stronger, the better.

1 Police powers must be in there. If we are going to
2 preserve what we know as our way of life, as I say, so
3 be it, let it be in there.

4 THE CHAIRMAN: Any other delegate desire to
5 speak in favor of the amendment?

6 Delegate Harry Taylor?

7 DELEGATE H. TAYLOR: Mr. Chairman, I wondered
8 whether the author of the amendment would yield to a
9 question.

10 THE CHAIRMAN: Delegate Hardwicke, do you yield
11 to a question?

12 DELEGATE HARDWICKE: Yes, Mr. Chairman.

13 THE CHAIRMAN: Delegate Taylor.

14 DELEGATE H. TAY LOR: Delegate Hardwicke, we
15 have had before us proposals which contained the language,
16 as shall be prescribed by law, or giving the General
17 Assembly power to set the number of members of the
18 legislature, to set the terms of the legislature, and
19 until now I never realized that that provision, that the
20 General Assembly shall prescribe by law, has no effective
21 enforcement.

1 However, you indicated there may be some way
2 to do it. I was wondering whether you could give us an
3 example of a provision that would contain the language,
4 as the General Assembly shall prescribe by law, that
5 could be enforced, and how would it be enforced.

6 THE CHAIRMAN: Delegate Hardwicke.

7 DELEGATE HARDWICKE: Well, Mr. Chairman, ladies
8 and gentlemen of the committee, there is it seems to me
9 a very important difference between our setting out
10 certain guidelines, certain general requirements for
11 the legislature, and then following that with the state-
12 ment that the General Assembly shall implement this by
13 law because there you have laid down the guidelines,
14 the over-all framework of what the General Assembly is
15 to do, and the General Assembly must in the nature of
16 things act in the area that we are talking about, such
17 things as restricting, reapportionment, and you have
18 only laid down the principles under which they shall act.
19 And if they fail to act, their action shall be uncon-
20 stitutional.

21 In this area that we are dealing with here,

1 according to the committee's recommendation, and in this
2 the committee's recommendation it seems to me is fatally
3 bad, you are saying that the legislature shall pass laws
4 about conservation. That is all they are saying, and
5 if the legislature passes a weak law about conservation,
6 do we say in the Constitution that it has acted, or if
7 it passes one that is too strong, shall we say consti-
8 tutionally that it has acted?

9 In that area, we are dealing with something
10 that is entirely different from the kind of problems that
11 we are raising and it seems to me to be frivolous and
12 foolish to say that the legislature shall pass laws about
13 conservation. I cannot see that it means anything.

14 THE CHAIRMAN: Delegate Taylor?

15 DELEGATE H. TAYLOR: Will the delegate yield
16 for a further question?

17 THE CHAIRMAN: Delegate Taylor.

18 DELEGATE H. TAYLOR: Just as a specific example,
19 Delegate Hardwicke, if we had adopted the provision that
20 the General Assembly could provide by law for the number
21 of delegates in the General Assembly and the number of

1 senators in the Senate, and they did not do this, what
2 could the people of the State of Maryland do?

3 DELEGATE HARDWICKE: Well, I submit, Delegate
4 Taylor, and members of the committee, that the problem
5 that you are raising is of a different kind and character
6 because there you are permissive. You are leaving the
7 number to be decided determined by the legislature itself,
8 and the only way they could not do that would be not to
9 create the General Assembly at all, so that their action
10 is imperative. They have to act in the area of creating
11 a General Assembly. They have no choice. Otherwise
12 there would not be one, and what we would be saying is,
13 as you suggest, that they have the power to name the
14 number.

15 THE CHAIRMAN: Any other delegate desire to
16 speak in opposition to the amendment?

17 Delegate Ulrich?

18 DELEGATE ULRICH: Mr. Chairman, I hope that
19 all people in this Assembly will be able to breathe
20 clean air and drink fresh water. Any legislative dealing
21 with natural resources is very difficult to get passed,

1 We do have a Department of Natural Resources.
2 They work with other conservationists in the state, and
3 they say, our hands are tied. We cannot make them act.

4 I oppose this amendment. I think the committee
5 report is a good one. It mandates the General Assembly
6 to act, and I hope that everyone in this room, in the
7 many years in the future, will be able to breathe
8 clean air and drink fresh water.

9 This is our goal. This is legislation in the
10 field of natural resources. It is lobbied very heavily
11 in the General Assembly. The Bureau of Natural Resources'
12 hands are tied unless there is a mandate in this Consti-
13 tution.

14 THE CHAIRMAN: Does any other delegate desire
15 to speak in favor of the amendment?

16 (There was no response.)

17 THE CHAIRMAN: Delegate Hardwicke.

18 DELEGATE HARDWICKE: Mr. Chairman, and members
19 of the committee, my proposal certainly was not intended
20 to have a negative effect upon the conservation policy
21 of the state. My problem with the committee report was

1 that it is simply not workable, and those of us who
2 favor natural resource legislation, and consider the
3 thing very seriously, just simply could not vote for
4 amending the Constitution for the legislature to act
5 any time on legislation, and it is my purpose in proposing
6 the amendment to make something palatable and to do
7 what I see would be accomplished by the committee report.

8 I take it from remarks of delegates such as
9 Delegate Scanlan that they are opposed both to the
10 policy statement that I have proposed in my amendment
11 and they are opposed to the statement of the committee
12 report, because they consider both of them to have the
13 same effect.

14 Frankly, I would like to say that I have no
15 objection whatsoever to exhortatory language in our Con-
16 stitution, and I hope when the time comes to consider
17 other exhortatory language that we will give consideration
18 to it not on the basis that it is exhortatory or not ex-
19 hortatory, but on the basis of the language in the case.

20 I hope we will not set out here an antiseptic
21 Constitution which will be so sterile, which will consist

1 of such meaningless and dried, hard, legal phrases that
2 it will make such dull reading that nobody will look at
3 it.

4 I do not object to exhortatory language in the
5 Constitution. It has a good effect, sets guidelines. If
6 you cannot put exhortatory language in the Constitution,
7 I submit there is no place for it whatsoever. A consti-
8 tution is an exhortatory instrument.

9 Let me say this, that I do not really care
10 what happens to the amendment insofar as conservation is
11 concerned. I would like to see some conservation provi-
12 sion in our Constitution. It seems to me that this is
13 a palatable way to have it, but there is nothing magic
14 in the amendment and there may be other ideas which will
15 be good.

16 THE CHAIRMAN: I think the Committee of the
17 Whole would like me to take note of the fact that Dele-
18 gate Miller is out of the hospital and back with us,
19 and to say to him we are delighted to have you with us
20 again.

21 (Applause.)

1 THE CHAIRMAN: Does Delegate Pullen desire to
2 speak in opposition to the amendment?

3 DELEGATE PULLEN: Yes, sir.

4 THE CHAIRMAN: The Chair recognizes you.

5 DELEGATE PULLEN: If I follow the logic under-
6 lying this amendment, then I see no reason but to write
7 nine-tenths of what we are reading. Exhortatory language
8 is not bad if we read the preamble of the Constitution
9 of the United States. We the people of the United States,
10 in order to form a more perfect union, establish justice,
11 insure domestic tranquility, provide for the common de-
12 fense, promote the general welfare -- think of what
13 Roosevelt did under that -- and secure the blessings of
14 liberty to ourselves and our posterity, do ordain and
15 establish a Constitution of the United States.

16 In my opinion, it is my opinion that the posi-
17 tion of a Constitutional Convention is mandatory upon
18 the legislature.

19 I should like Delegate Hardwicke to tell me,
20 and I ask this in all sincerity, under what legalistic
21 or constitutional provision did the Federal Court

1 substitute its judgment for that of the legislature in
2 regard to reapportionment.

3 THE CHAIRMAN: Delegate Hardwicke, do you desire
4 to respond to the question?

5 DELEGATE HARDWICKE: At the risk of dragging
6 this thing on through terrible tedium, I will make this
7 very brief statement, and merely to repeat what I have
8 said, that I do not see how, if the legislature fails
9 to enact conservation legislation, somebody can go into
10 court, into a court of equity and get a mandamus or
11 injunction to the legislature saying, enact some legis-
12 lation.

13 I just do not see how you can do it, and if
14 you could do it, I submit you should not do it, and I
15 submit that the courts should not have such a power. I
16 do not know how they would enact it.

17 If the legislature does not enact, I do not see
18 how the courts can do it, and I think that the language
19 of the committee is a terrible precedent, and I think
20 that it is totally unworkable.

21 THE CHAIRMAN: The question arises on the

1 adoption of Amendment No. 1. Are you ready for the
2 question? A vote Aye is a vote in favor of the amend-
3 ment. A vote No is a vote against. Cast your vote.

4 Has every delegate voted? Does any delegate
5 desire to change his vote?

6 The clerk will record the vote.

7 There being 16 votes in the affirmative and
8 106 in the negative, the motion is lost and the amendment
9 fails.

10 The question arises on the adoption of Com-
11 mittee Recommendation GP-3. Are you ready for the ques-
12 tion? A vote Aye is a vote to approve Committee Recom-
13 mendation No. GP-3.

14 Delegate Bard.

15 DELEGATE BARD: I should like to speak on
16 GP-3. We have not had any discussion, Mr. Chairman, on
17 GP-3, as such.

18 THE CHAIRMAN: Do you desire to speak in favor
19 or against?

20 DELEGATE BARD: In favor.

21 THE CHAIRMAN: You may proceed.

1 DELEGATE BARD: There are five important reasons
2 why I think this recommendation should be adopted. One,
3 because we are living in an era where natural resources
4 have been impoverished and at a time when technology and
5 science makes it important for us to use these resources
6 for the good of all man; for the economy of our state,
7 we have said a good deal about improving the economy in
8 the State of Maryland, but we have not said very much
9 in respect to specific things which we might do. I think
10 the state has precious natural resources which will per-
11 mit improvement of our economy, and for the enhancement
12 of beauty and esthetics which enrich our lives.

13 Secondly, because men and women from all walks
14 of life depend upon our natural resources for the enjoy-
15 ment of their leisure and promotion of their health.

16 Representatives from many organizations dealing
17 with conservation have indicated that this will stimulate
18 and help integrate their efforts.

19 Third, Maryland has never had a well-integrated
20 program with respect to natural resources and under
21 Governor Tawes we took important steps toward integrating

1 our Chesapeake game affairs, game, inland fish, forest
2 and parks, open space, water resources, soil conserva-
3 tion, et cetera, but we still have far to go in this
4 respect.

5 Fourth, this is fundamentally perhaps an ex-
6 hortatory statement and I for one should like to change
7 the word "shall" to "may", and I would like the privi-
8 lege after I am finished, if I have it, but nevertheless
9 I think fundamentally it is exhortatory, and it may well
10 be. I remind you there are other exhortatory statements
11 that make it clear that this is what we believe.

12 I would like to give one illustration that
13 has not been given here: In 1845, the Constitution of
14 Maryland for the first time stated the legislature ought
15 to encourage the diffusion of knowledge. All over the
16 state there was recognition that this is where Maryland
17 stood. It is true that it was not until 1866 that a
18 state system of public schools was established, but
19 immediately after this exhortatory statement in 1845,
20 the public schools of Baltimore recently established as
21 such received great impetus, as did the public county

1 schools. There were no enforcements that you could
2 depend upon.

3 The same kind of question is asked today as
4 to the meaning of this statement, what good is it to
5 say that the legislature ought to encourage the diffusion
6 of knowledge, whereas back in 1845 -- but the truth of
7 the matter is that the public schools of the State of
8 Maryland received their great impetus under this ex-
9 hortatory directional statement.

10 Now I remind you that perhaps the best example
11 of the exhortatory statement and its value is the classic
12 one from the U. S. Constitution, to which Dr. Pullen
13 referred, to secure the blessings of liberty, for the
14 long way you needed to go, and this was enunciated. We
15 made it clear to the world that we needed to get there.

16 Finally, I think this is my fundamental point,
17 because a constitution should reflect the deep concerns
18 of our times, the 1967 Constitution shall give serious
19 attention to this standard.

20 I believe that the Constitution should give
21 attention to the economic and social requirements of

1 our times, and herein I disagree strongly with Delegate
2 Scanlan, and I believe that these concerns reflect
3 our most deep-seated needs, just as in the 18th and
4 19th century, political requirements did.

5 Perhaps housing as such should not get into
6 the Constitution, but this document would indeed be
7 an aim in terms of our times if it did not concern itself
8 with the economic well-being of man, or what good is
9 the ballot without bread and without the joy of living.

10 It seems to me that the question, for whom does
11 this recommendation exist, was not really answered well,
12 and I am sorry that it was not. It exists fundamentally
13 for man; the conservation of resources, the enhancement
14 of natural beauty, the purification of our air, is for
15 man's benefit. It is not for the birds and bees, and
16 I think unless on this particular recommendation we make
17 it clear that those of us who are here shall go beyond
18 political structure as our sole task, we are going to
19 get into difficulty because we will not reflect the
20 major differences between the concerns of man in the
21 last third of the 19th century.

1 Mr. Chairman, we are living in times that are
2 demanding, and I mean to crowd into each moment of life
3 that which is possible, but to get back to my crescendo
4 point, the conservation exists fundamentally, as I see
5 it, for man, not for the bird, and for the beast.

6 I want to make a special appeal finally to those
7 who wanted the word "shall". There will be an amendment
8 to substitute "may". It may well be that you will be
9 disappointed with this but the significance is that this
10 is the beginning, and this fundamentally is the first
11 of a number of recommendations that is deeply concerned
12 with this broad area which I have set forth, and now
13 may I yield to Delegate Adkins? Is that possible for
14 an amendment?

15 THE CHAIRMAN: No.

16 Delegate Boyer, Delegate Bard suggested a modi-
17 fication in line 8 to change the word "shall" to "may".
18 I take it from your earlier presentation that you
19 would be unwilling to agree to that. Am I correct?

20 DELEGATE BOYER: Yes, sir. We felt this would
21 probably dilute the entire intent of the committee and

1 it should be mandatory and not optional with the General
2 Assembly.

3 THE CHAIRMAN: Delegate Bard, do you have an
4 amendment?

5 DELEGATE BARD: Delegate Adkins has.

6 THE CHAIRMAN: Delegate Adkins.

7 DELEGATE ADKINS: I have such an amendment
8 prepared, on page 1, line 8, strike out the word "shall",
9 insert in lieu thereof the word "may".

10 THE CHAIRMAN: We have an amendment. The
11 clerk will read the amendment. It will be Amendment No.2.

12 MR. QUILLEN: Amendment No. 2 to Committee
13 Recommendation No. GP-3, by Delegate Adkins: On page
14 1, line 8, strike out the word "shall" and insert in
15 lieu thereof "may".

16 THE CHAIRMAN: Is the amendment seconded?
17 (Whereupon, the amendment was seconded.)

18 THE CHAIRMAN: The Chair recognizes Delegate
19 Adkins to speak to the amendment.

20 DELEGATE ADKINS: I feel, Mr. Chairman, in
21 some sense in this debate we have lost sight of the

1 purpose for which we are here. We are not here to draft
2 a legislative program for the solution of Maryland's
3 problems. We are here to structure a state government
4 which can in turn solve Maryland's problems.

5 Mandatory legislation in a constitution is not
6 wise. I would therefore urge that if the proponents
7 of this proposal feel that the policy must be declared
8 to be a state policy, at least it be left to the orderly
9 processes of law for that policy to be developed.

10 I urge it be made permissive and not mandatory.

11 THE CHAIRMAN: Does any delegate desire to speak
12 in opposition to the amendment?

13 DELEGATE BOYER: Mr. Chairman, I have already
14 previously indicated our opposition to the amendment.
15 We feel that this, as a suggested amendment, would make
16 the entire section meaningless. It is perfectly obvious
17 now that the General Assembly may do this. We want to
18 make it obligatory, mandatory, and that this Convention
19 indicate its intent that the General Assembly shall.

20 I think the one thing I do like about the
21 amendment, it is very concrete, succinct, very clear,

1 changes one word. I think everyone understands it. I
2 sincerely hope that we could expeditiously and currently
3 vote on this now.

4 THE CHAIRMAN: Any delegate desire to speak
5 in favor of the amendment?

6 Delegate Henderson?

7 DELEGATE HENDERSON: Mr. Chairman, I have lis-
8 tened with great interest to the discussion here this
9 morning. I have been a conservationist all my life, and
10 I have the greatest sympathy with the objectives to be
11 obtained, but I have been very much concerned by the
12 discussion, which seems to suggest that by using the
13 word "shall" in this amendment it would open, or it would
14 require or permit any taxpayer who is disgruntled or
15 does not think the legislature has gone far enough, to
16 take the matter into court. If that sort of thing is
17 permissible, and I know of no precedent for it in this
18 field, certainly in this state or anywhere else, that
19 the court can compel the legislature to act, and I
20 think it would open a Pandora's box. It would require,
21 or it violates fundamental principles.

1 I find no support in the reapportionment cases
2 for anything like this and therefore, ladies and gentle-
3 men of the Conventin, I urge that this amendment changing
4 "shall" to "may", which leaves it permissive with the
5 legislature, but still states an objective in which
6 some people are interested, I hope that this amendment
7 prevails.

8 THE CHAIRMAN: The Chair recognizes Delegate
9 Burdette to speak in opposition to the amendment.

10 DELEGATE BURDETTE: Mr. Chairman, I really
11 should like to ask a question of Delegate Adkins, which
12 flows to --

13 THE CHAIRMAN: You are not in order at this
14 point, if that is your purpose. I will recognize you in
15 a moment.

16 Delegate Gleason, do you desire to speak in
17 opposition to the amendment?

18 DELEGATE GLEASON: Yes.

19 THE CHAIRMAN: You may proceed.

20 DELEGATE GLEASON: Mr. Chairman, we are losing
21 sight of what we are doing here. If this amendment is

1 adopted, then I have to suggest that the whole provision
2 has absolutely no place in the Constitution, because
3 it is basic that the General Assembly already has plenary
4 power to carry out and pass legislation in this field.

5 I might just suggest to Judge Henderson that
6 it is also basic, court history, that no person can go
7 in and mandate a legislature. The essential purpose of
8 the committee proposal as I understand it is that the
9 waste of our natural resources has become a problem of
10 such significance, not only in Maryland but around the
11 country, that the Constitution of Maryland, the new Con-
12 stitution, should place a positive mandate on the legis-
13 lature to do something about it.

14 If the legislature decides not to do something
15 about it, the only recourse is to the voters of the state,
16 and that is the issue.

17 I hope this amendment is defeated.

18 THE CHAIRMAN: Delegate Adkins, do you yield
19 to a question from Delegate Burdette?

20 DELEGATE ADKINS: Yes, sir. I tried to see if
21 I could not answer it privately but I could not.

1 THE CHAIRMAN: Delegate Burdette.

2 DELEGATE BURDETTE: I should like to deal on
3 the record with a problem which perhaps appears in both
4 the Adkins amendment and in the committee position.

5 If we were to read these proposals in the
6 light of another proposal not yet on motion, but before
7 us, that counties have powers not denied to them, is there
8 any intent, Delegate Adkins, in your motion to make this
9 an exclusive legislative power, or may this question
10 still be left to later determination as to whether or not
11 it is legislative power or a concurrent power?

12 THE CHAIRMAN: Delegate Adkins.

13 DELEGATE ADKINS: I should think it was con-
14 current. All my amendment purports to do is to indi-
15 cate if there is question, as there seems to have been,
16 about the right of state government to act in this
17 area, that this provision clearly permits it to so
18 act.

19 My own feeling is there is no doubt about
20 that. For that reason I do not really feel that the
21 entire proposal is in order, but if the entire proposal

1 is in order, then I would urge that it be permissive,
2 not mandatory, for reasons which have been stated ex-
3 tensively in debate.

4 THE CHAIRMAN: Delegate Burdette.

5 DELEGATE BURDETTE: Am I correct we are not
6 really dealing with this question of exclusive powers
7 in this motion at all?

8 THE CHAIRMAN: Delegate Adkins.

9 DELEGATE ADKINS: So far as my amendment is
10 concerned, we are not dealing with exclusive powers. I
11 do not think it affects them.

12 THE CHAIRMAN: Any other delegate desire to speak
13 in opposition to the amendment?

14 Delegate James?

15 DELEGATE JAMES: I am in favor of the amendment.

16 THE CHAIRMAN: Any delegate desire to speak in
17 opposition to the amendment?

18 Delegate Clagett.

19 DELEGATE CLAGETT: Mr. Chairman, I am reminded
20 of a rather humorous story, which is very appropriate I
21 believe here, and the story goes that in the house a

1 house woman was very much upset one morning with her
2 husband and she was exchanging a degree of womanly con-
3 fidences and seeking a degree of consolation from the
4 cook and she said to her, Rachel, why in the world do
5 you work from early morning until late at night; why in
6 the world do you make a living and support that worthless
7 husband of yours, and Rachel looked her squarely in the
8 eye and said, indeed I do work from early in the morning
9 until late at night, and indeed I do make the living,
10 but he makes the living worth living.

11 Therefore, I feel that with respect to conser-
12 vation, we are dealing with something that is so important
13 that it really boils down to just that. It makes living
14 worth living.

15 THE CHAIRMAN: The Chair recognizes Delegate
16 James to speak in favor of the amendment.

17 DELEGATE JAMES: Mr. Chairman and fellow dele-
18 gates, I want to call to your attention that there will
19 probably be another provision in the Constitution
20 which will say that the legislative, executive and
21 judicial powers shall be distinct from one another. I

1 think that is being included in the Declaration of Rights.

2 Now, if that is a provision in this Constitu-
3 tion, which it is in most state constitutions, the
4 provision saying the General Assembly shall pass this
5 type of legislation and under a concept it is judicially
6 enforceable, yet it is two conflicting constitutional
7 concepts. Number one.

8 Number two, it is perfectly ridiculous to think
9 that the courts in Maryland can really enact legislation
10 by decree, providing for conservation policies of this
11 state. It is an absolutely absurd concept.

12 On the other hand, the adoption of the amend-
13 ment will permit the legal concept advocated by Dele-
14 gate Carson, that the General Assembly would be able to
15 act in an appropriate manner to provide important con-
16 servation problems applicable to areas of the state.

17 THE CHAIRMAN: The Chair recognizes Delegate
18 Jett to speak in opposition to the amendment.

19 DELEGATE JETT: Mr. President, fellow delegates,
20 I had hoped not to arise on this occasion but I feel
21 it is absolutely essential that we in this Convention go

1 on record to the people of Maryland and the people of
2 this country as being in favor of conservation. Those
3 of us who over a period of a quarter of a century or
4 not have appeared in these halls and asked for legisla-
5 tion on conservation, and have had it ignored at times,
6 set aside at times, and not acted on at other times,
7 feel that regardless of the political worries and
8 niceties that our friend would inject into this debate,
9 we want some forceful, positive statement to the people
10 of this state that conservation is a thing that makes
11 Maryland worth living in, and conservation of our natural
12 resources is something that interests and affects every
13 man, woman and child in this state, and we would ask,
14 and we ask very seriously and with all the strength that
15 we have, that we tell the legislature in terms that no
16 one can misunderstand, we want the natural resources of
17 this state fully protected for the future.

18 THE CHAIRMAN: Any other delegate desire to
19 speak in favor of the amendment?

20 Delegate Scanlan?

21 DELEGATE SCANLAN: Delegate Adkins, as always,

1 is very persuasive with me. I think what he has sug-
2 gested is preferred if we are to do anything along these
3 lines, but I would like to say this: The Chairman of
4 the committee, as he began his remarks, announced to my
5 surprise that this was an emotional issue. As I
6 listened to the debate, I have seen how correct he was
7 in those remarks.

8 Whatever we put in this Constitution, Mr. Carson,
9 would not have saved the rockfish, if there had been an
10 exhortatory article in the previous Constitution. It
11 is when the people of this state through their represen-
12 tatives come alive to the fact that conservation is all-
13 important; then and then only will we achieve the true
14 conservation measures that we all desire. No exhortation
15 in the Constitution is going to bring that about.

16 For example, the 14th Amendment lasted nearly
17 a hundred years before Congress took action to implement
18 this great principle of the Civil Rights Act of 1958,
19 despite the fact it was an exhortation in the 14th Amend-
20 ment that Congress could implement the principles of
21 that amendment by statute.

1 The representatives of the people in the long
2 run will determine the type of conservation they have
3 in this state. Therefore, I think it either is a meaning-
4 less statement of a platitude, or more dangerous as has
5 been suggested in the debate, somehow to create a
6 judicially enforceable article. It is for that reason
7 I prefer Delegate Adkins' suggestion, which has the
8 virtue of candor and honesty, it is a pure exhortation.
9 Unless the legislature acts and implements it, it is
10 meaningless.

11 Furthermore, it has been perfectly clear and
12 the Chairman of the committee admitted that the legisla-
13 ture has the plenary power, contrary to Mr. Gleason's
14 situation; the Federal Government can only conserve to
15 the exercise of its delegated powers, over interstate
16 powers, waterways or some of the other specifically
17 delegated powers but a state, including this state, has
18 the plenary power to act to conserve. It can do that
19 now, and no amount of exhortation to do it is going to
20 bring it about, if the representatives of the people are
21 not ready to do it.

1 Finally, I think we create a dangerous prece-
2 dent if we put this fine, meaningless declaration in
3 the Constitution to satisfy the conservationists. The
4 consumer credit people, the labor people, the far mers
5 and the others, are all behind with their exhortatory
6 proposals. If that is the kind of a constitution you think
7 you have come here to write, go write it. To me it does
8 not make any sense.

9 THE CHAIRMAN: The Chair recognizes Delegate
10 Bothe to speak in opposition to the amendment.

11 DELEGATE BOTHE: Actually, Mr. Chairman, Dele-
12 gate Scanlan expressed my views quite perfectly on the
13 subject of an exhortatory declaration of this or any
14 other matter in the Constitution.

15 I point out to Delegate Bard, Article 43 in
16 the Declaration of Rights, that it exhorts the legislature
17 not only to encourage the diffusion of knowledge but
18 goes on to say that it should encourage the diffusion
19 of virtue.

20 That provision has been here a long time and
21 I challenge him to give me an example of its operative

1 effect.

2 I feel that by placing matters of this kind
3 in the Constitution, whether they pertain to conservation,
4 which of course I subscribe to wholeheartedly, to the
5 next item recommended by the General Provisions Committee,
6 consumer protection, or any other of such provisions, is
7 to hold out a false hope and to create a document which
8 is more decorous than definitive and responsible, and
9 for that reason, I would oppose both the amendment to
10 the amendment and the committee's recommendation in any
11 such reference be included in the present Constitution.

12 THE CHAIRMAN: Any other delegate desire to
13 speak in favor of the amendment?

14 Delegate White?

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1 DELEGATE WHITE: : Mr. Chairman, I have
2 listened for the past two hours, and I find the discussion a
3 bit confusing.

4 Great empahsis has been placed on directing the
5 legislature to perform certain functions. Apparently many
6 delegates here will reject this concept on the theory that
7 certain things may not be enforceable, that they are mere
8 expressions of high ideals that may not be attainable;
9 but in looking at just one, which this same Assembly has
10 passed, it began by saying that we shall have a post-audit,
11 that a post-audit shall be provided. It shall be provided
12 by the General Assembly. It shall, and when I go over the
13 general provisions section, it also says that certain other
14 things shall be. So I am wondering, are we fearful of
15 attempting to protect our natural resources, our natural re-
16 sources? Are we using the same arguments to reject some-
17 thing which is good, that we used to embrace something which
18 we say is good, which requires the same kind of action on
19 the part of the legislature? And I would like Chairman
20 Boyer to epxlain to me if he sees a difference between
21 the "shall" which requires the post-audit, and the "shall"
 which requires the State militia, and the "shall" which

1 requires the General Assembly to do something about natural
2 resources? Naturally I shall vote for that concept.

3 THE CHAIRMAN: Delegate Boyer, did you
4 understand the request?

5 DELEGATE BOYER: As I understand the request, he
6 is asking me for a dictionary definition of the
7 difference between the words "shall" and "may". I can
8 not answer.

9 THE CHAIRMAN: He asked you to contrast the use
10 of the word in certain other specific provisions, militia
11 is one.

12 DELEGATE BOYER: First of all, in the militia,
13 the wording we adopted is not "shall." It is "may."

14 Secondly, as to the post-audit, I refer to Judge
15 Sherbow to explain that, since it came out of his committee.

16 As to this, GP-3, to me at least it is crystal
17 clear that we want in this Convention to speak with a voice
18 that is loud and clear, that the General Assembly "shall",
19 obligatory, mandatory, provide for the protection of natural
20 resources. To take the opposite side of the coin would be
21 that the General Assembly may do so, and if this is

1 adopted to me it appears to be meaningless, because I per-
2 sonally believe at this time that the General Assembly may
3 do so.

4 The adoption of GP-3 as a recommendation by your
5 General Provisions Committee is an attempt on behalf of
6 the conservationists who appeared before us, and I say
7 again, intensely, immensely interested in this, that
8 the General Assembly no longer has the option of what they
9 may do; but that they shall. It is a directive to do so.

10 I can only answer again by repeating that we
11 would sincerely hope that we could vote on this. It is a
12 very clearcut question. Either you want the General Assembly
13 to do it, or you want to continue their efforts that they
14 may do it.

15 THE CHAIRMAN: Any other delegate desire to
16 speak in favor of the amendment?

17 The Chair recognizes Delegate Pullen to speak
18 in opposition.

19 DELEGATE PULLEN: Mr. Chairman, you gave the
20 answer, that the answer lies in the ballot.

21 Now, the public understands very clearly that

1 there is a difference between shall and may, and when you
2 say shall and the legislature does not act, they have to
3 stand up and be counted and explain to the people why they
4 did not do something.

5 Let's move away from the legalistic to the
6 field of practical politics.

7 THE CHAIRMAN: Delegate Johnson.

8 DELEGATE JOHNSON: Mr. Chairman, would Chair-
9 man Boyer yield for a question?

10 THE CHAIRMAN: Delegate Boyer, do you yield to
11 a question from Delegate Johnson?

12 DELEGATE BOYER: I yield gladly.

13 DELEGATE JOHNSON: Chairman Boyer, because I
14 don't fully understand how the legislature could pass a
15 law that would encompass the objectives of this particular
16 proposal, I am wondering whether or not your committee con-
17 sidered the possibility of the General Assembly providing
18 by law for a general situation to deal with conservation,
19 enhancement, improvement, et cetera.

20 DELEGATE BOYER: I think that this directive
21 that the General Assembly shall by law provide, et cetera,

1 certainly indicates our wishes and voice to them to do so.
2 How this is to be done, there must be trust and faith
3 somewhere, in that the General Assembly, with this directive,
4 shall and will be compelled, I repeat again, to do something
5 in this area.

6 How implementation is to be done, I have no
7 way of knowing now. My crystal ball broke down last night.
8 But it could possibly be done through establishment of
9 another Natural Resources Board or an agency or bureau
10 or something, just as in the post-audit, that the General
11 Assembly, under its direction, would create such a depart-
12 ment.

13 THE CHAIRMAN: Delegate Willoner, do you desire
14 to speak in opposition or in favor of the amendment?

15 DELEGATE WILLONER: In favor.

16 THE CHAIRMAN: You may proceed.

17 DELEGATE WILLONER: Mr. Chairman, it seems
18 that this debate has degenerated into a debate between pro
19 and con on the question of conservation.

20 I am a conservationist. It seems to me what
21 this really is a question of is a question of bad law or

1 good law.

2 If you would listen to Judge Henderson here,
3 this question of conservation is not the issue here.
4 The question of how the General Assembly will act in this
5 area is really a question of balancing interests between
6 how much money you have to spend for conservation, how much
7 for education.

8 Please listen -- that this will create a new
9 cause of action, apparently at least, and that this would
10 create a new cause of action and would require the courts to
11 write laws, I guess making the legislature protect the
12 development or prevent the development of land; and the
13 question that I asked the chairman before -- and I think
14 it is a very important principle that we are involved here
15 in, and "may" is important, because it does not create the
16 bad law.

17 THE CHAIRMAN: Is there any further discussion?
18 Are you ready for the question?

19 Do you desire to be recognized, Delegate Taylor?
20 Do you desire to speak on the amendment?

21 DELEGATE L. TAYLOR: I want to speak against

1 the amendment. I feel that this concept should be included
2 in the consitution. I feel that it should be mandatory, be-
3 cause the Department of Conservation needs this sort of
4 thing. We find that in our cities and in our counties and
5 rural areas, we find the streams are becoming polluted, we
6 find that many factories dump chemicals and other types
7 of pollutants into the streams, and this should be
8 confronted by some sort of law that would stop this type
9 of water pollution.

10 I want to read a short statement from an article
11 called "The Fallacy of Single Purpose Planning by the States."

12 "If the proposed highway would disrupt a neigh-
13 borhood, displace homes, increase air pollution, destroy
14 forests or invade the park, these detriments should be cal-
15 culated and subtracted from the potential benefits in de-
16 termining whether the highway should be built. They seldom
17 are. Normally the highway engineer's forthright concern is
18 to speed automobiles on their way. To accomplish this he
19 believes that he is justified in uprooting thousands of
20 people, uprooting trees, destroying civic values."

21 I feel that the General Assembly should pass

1 laws to solve these problems. I feel that if we make it
2 permissive, the General Assembly will not act.

3 At the present time we do not have laws covering
4 these problems, and if we try to bring in a new concept for
5 conservation, we would see that we would be meeting certain
6 needs, and also the need of conservationists.

7 THE CHAIRMAN: Are you ready for the question?

8 The question arises on the adoption of Amendment
9 No. 2. A vote Aye is a vote in favor of the amendment.
10 A vote No is a vote against. Cast your votes.

11 Has every delegate voted? Does any delegate
12 desire to change his vote? The Clerk will record the
13 vote.

14 There being 29 votes in the affirmative and 99
15 in the negative, the motion is lost. The amendment fails.

16 Are there any other amendments to Committee
17 Recommendation GP-3?

18 (There was no response.)

19 THE CHAIRMAN: Is there any further discussion
20 of Committee Recommendation GP-3?

21 Delegate Beachley.

1 DELEGATE BEACHLEY: I would like to speak in
2 favor of Recommendation GP-3.

3 THE CHAIRMAN: You may proceed.

4 DELEGATE BEACHLEY: I have noticed in
5 the Committee memorandum accompanying GP-3 that marine
6 life and shore lines are included within the scope of the
7 recommended language upon conservation.

8 Along that line, in a recent popular book about
9 a trip through the big city, and by that they mean the
10 megalopolis, the author made several comments which would
11 indicate reasons for conserving our marshland on the Atlan-
12 tic Seaboard. There is one that is very familiar to you all,
13 about the places for protection of our wildlife. You all
14 recognize that. It is very important in our State.

15 He made also the remark that in protected marsh-
16 lands, a greater amount of protein in the forms of seafood
17 can be found or raised than the amount of protein which
18 could be raised per acre on cattle land.

19 I feel it is mandatory that we conserve our
20 lands, but particularly our marshlands, and I recommend
21 support of GP-3.

1 THE CHAIRMAN: Does any delegate desire to
2 speak in opposition to Committee Recommendation GP-3?

3 Are you ready for the question?

4 The question arises on the adoption or the
5 approval of Committee Recommendation No. GP-3. A vote Aye
6 is a vote in favor of the approval of the recommendation.
7 A vote No is a vote against. Cast your votes.

8 Has every delegate voted? Does any delegate
9 desire to change his vote?

10 The Clerk will record the vote.

11 There being 107 votes in the affirmative and
12 21 in the negative, Committee Recommendation No. GP-3 is
13 approved.

14 The next item on the calendar is Committee
15 Recommendation No. LG-1.

16 For what purpose does Delegate Ulrich rise?

17 DELEGATE ULRICH: Personal privilege, Mr.
18 Chairman.

19 THE CHAIRMAN: State your privilege.

20 DELEGATE ULRICH: I would like at this time
21 to thank the Committee for their support of this

1 Recommendation.

2 In the balcony is a lady who worked so very hard.
3 Her name is Mrs. Evelyn Cotton. She arranged for all the
4 hearings, with a very severe physical disability,
5 and I would like her to be recognized at this time.

6 THE CHAIRMAN: Delighted that she is here.

7 (Applause.)

8 The next item on the calendar is the considera-
9 tion of Committee Recommendation No. LG-1. You
10 should have before you Committee Recommendation LG-1, on
11 blue paper; and Committee Memorandum LG-1, Debate Schedule
12 No. 3.

13 As the Chair understands it, there are no
14 minority reports. Is that correct, Delegate Moser?

15 DELEGATE MOSER: Yes, sir.

16 THE CHAIRMAN: The Chair recognizes Delegate
17 Moser, Chairman of the Committee on Local Government, for
18 the purpose of presentation of Committee Recommendation
19 LG-1, and Committee Memorandum LG-1.

20 DELEGATE MOSER: Mr. Chairman, Ladies and Gentle-
21 men of the Committee:

1 Beginning with the committee meeting on Septem-
2 ber 15, the Local Government Committee heard a total of
3 140 witnesses. Representatives of all but two county
4 governments in the State came to testify before us. We
5 heard from the mayors of 27 cities, as diverse as Salisbury,
6 Frederick, Cumberland, and Rockville are from Glen Arden,
7 Garrett Park and Greenbelt. Private citizens from various
8 parts of the State also appeared.

9 We invited by letter all the members of the
10 General Assembly to appear, and a number of them did so.

11 We also heard from State governmental represen-
12 tatives, experts in the field of government, and several
13 Maryland Congressmen.

14 In between our public hearings of witness, and
15 afterwards, for a concentrated period of four weeks the
16 committee debated, drafted and redrafted the provisions which
17 have ultimately resulted in the Committee Recommendation
18 which you have before you.

19 I needn't tell this Committee the nature of
20 the membership of the Local Government Committee. You all
21 are aware of our backgrounds by now, and I think that you

1 know that it is representative of the makeup of this Con-
2 vention, particularly with respect to the parts of the
3 State from which the members come.

4 In consultation with a number of delegates
5 from other committees who were particularly interested in
6 the local government article, we arrived at the
7 Committee Recommendation. It represents a consensus.
8 We believe that the sections included in it are technically
9 sound and will work efficiently.

10 As you can see from the Committee Memorandum,
11 and I refer to the summary of hearing, or starting at page
12 4, a good number of decisions on these sections
13 were by unanimous votes; in some cases by 18 to 1 vote.

14 This is not to suggest that every word in the
15 Recommendation represents a first choice of each member
16 of the committee, but at the end, substantially all members
17 were reasonably satisfied with what this does.

18 As the Chairman has already stated, there are no
19 minority reports, and of course you know this.

20 Not only the Recommendation, but the Committee
21 Memorandum itself were reviewed page by page by the

1 committee, and the recommendation wasn't released until
2 everyone was satisfied with what is in the memorandum.

3 The 13 sections that you see here are the final
4 product of the entire committee, and are not based on the
5 ideas of just a majority of it.

6 Let me mention, if I may, the structure of the
7 recommendation in the memorandum. Section 7.01 through
8 7.12 of the committee recommendation are intended to be
9 included in the local government article. 8.06 is intended
10 for inclusion in the General Provisions article.

11 The recommended sections of article VII are
12 set forth by us in a deliberate order, subject to inevitable
13 surgery, probably by the Committee on Style, Drafting and
14 Arrangement.

15 Let me mention this order: 7.01 relates to
16 definitions used, particularly in the local government
17 article, but also throughout the Constitution.

18 7.02 through 7.05 deal with counties.

19 7.06 controls the general application of laws,
20 and like 7.01 is applicable or intended to be applicable
21 throughout the Constitution.

1 Sections 7.10 and 7.11 concern multi-county
2 governments.

3 Section 7.12 includes limitations on the
4 extensions of credit by all units of local government.

5 And, of course, sections 7.07 through 7.09
6 deal with municipal, corporate, and civil units.

7 The Committee Memorandum, as you can see, con-
8 tains summaries starting at page 4, giving some of the rea-
9 sons for the recommendations and explaining them generally.

10 Commencing at page 9 are detailed comments on
11 each of the provisions and the provisions are typed above
12 there. I call the attention of this Committee at this
13 time to the fact that there are a few misprints and typos
14 in some of the sections as they are reproduced in the memo-
15 randum. The precise language is set forth in the recom-
16 mendation, but should be consulted if you are in doubt at
17 any point.

18 Exhibit 1 to the Committee Memorandum simply
19 lists some of the research papers to be utilized and all
20 the ones which the committee had prepared for it.

21 Exhibit 2, beginning on page 39, is intended to

1 set forth concisely the Maryland experience with public
2 local legislation.

3 We used as sources a series of studies of this
4 problem, the first one having been performed in 1904, and
5 you can see these in the footnotes. They refer to the
6 various sources from which the information was obtained.

7 In Table 1, on page 41 of the Committee
8 Recommendation, we have used the 1966 and 1967 legislative
9 records to illustrate what would have happened to the
10 local bills which were passed by the General Assembly, had
11 all counties had shared powers of home rule in each of those
12 years.

13 If you want to refer there to that very briefly,
14 you will see at the very top the number, a total of 146
15 bills in 1966, and 145 bills in 1967, in the categories at
16 the top of Table 1. These could have been passed by
17 county councils in all counties had been home rule counties
18 at that time.

19 Table 2 on page 42 shows the number of local bills
20 passed by the legislature for each county in the years indi-
21 cated, and you can see, I think, from this what happened

1 in the four counties that have charter, Montgomery, Balti-
2 more, Anne Arundel, and Wycomico. There are double stars
3 after the figures after they got home rule.

4 A review of the recommendations which the
5 Local Government Committee has made shows I think that all
6 sections of the recommendation are integrated and unified
7 to provide a series of balanced provisions for local
8 government in Maryland.

9 As we went through the sections that we have
10 adopted to make a final review of them and to clarify the
11 meaning of each sentence, we repeatedly had found that
12 changing one sentence has required a reappraisal of other
13 sections. Language which at first seemed to clarify our
14 meaning at times would cloud the meaning of the section
15 when that language was analyzed. We found this to be
16 particularly true with respect to section 7.05, powers of
17 counties, and section 7.06, general application of laws.
18 These two provisions, as you all know, are highly technical,
19 and they also are closely interrelated.

20 Let me speak, if I may, in summary form on the
21 many issues which your committee considered and discussed,

1 and what was done with respect to each one.

2 First was whether to require each county to
3 adopt an instrument of home rule. That is, mandatory home
4 rule.

5 Second was whether to provide powers to the
6 counties through a sharing in the State's powers, or by
7 an express grant of enumerated powers.

8 Third, how to limit public local legislation
9 without at the same time unduly restricting the General
10 Assembly in areas where State policy or interest requires
11 action affecting localities.

12 Fourth, how to provide a workable relationship
13 of municipalities with the county and State; and

14 Fifth, what provisions could be made for the
15 solution of regional problems.

16 First, mandatory county home rule: The
17 Recommendation, section 7.03, provides this. Unlike the
18 counties of other States, Maryland's counties have been more
19 than just administrative arms of the State. Counties have
20 exercised extensive local policy governing powers.
21 The committee therefore concluded that county

1 governments should be strengthened.

2 At this point in time Maryland counties are the
3 units best able to furnish efficiently those local
4 governmental services which should be provided to larger
5 areas

6 Although in some counties, municipalities fur-
7 nish many local services, our investigation shows the
8 trend is toward provision of most local services by the
9 counties.

10 Of course, the Recommendation requires that
11 each county adopt a form of home rule government that be
12 suited to its particular circumstances, and that will permit
13 it to perform functions and administer the powers it will
14 obtain under the new Constitution.

15 Mandatory home rule has virtually unanimous
16 support of all the witnesses who testified and appeared
17 before the committee.

18 Second, shared powers for counties: This is
19 covered in recommended section 7.05. We strongly recommend
20 that the Constitution also provide that the State share its
21 powers with the counties, except the powers denied the

1 counties by the Constitution, by law, or by the counties'
2 own instruments of government.

3 What do we mean by "shared powers"?

4 There isn't any mystery to the phrase. We mean just what
5 the words say. Counties can act freely, just as may the
6 General Assembly, but, and this is the big "but", first,
7 the county cannot act where a law of the General Assembly
8 occupies the field. For instance, the law on wills, the
9 Commercial Code, the Landlord-Tenant Law, and most of the
10 laws in the Maryland Code. These would preempt the field
11 and prevent the county from acting in a way inconsistent
12 with those general laws; and second, the county cannot act
13 if the General Assembly can't act in a particular field.

14 For instance, the General Assembly might wish
15 to deny counties the right to pass air pollution laws and
16 require them to follow statewide or regional standards.
17 The General Assembly has prohibited all counties from
18 permitting slot machines.

19 THE CHAIRMAN: Delegate Moser, I think
20 your presentation is obviously going to continue for some
21 time. I think we had better suspend.

1 The Chair recognizes Delegate Powers.

2 DELEGATE POWERS: Mr. Chairman, I move the
3 Committee of the Whole rise and report to the Convention
4 that we still have under consideration Committee Recommenda-
5 tion LG-1.

6 THE CHAIRMAN: And have approved Committee
7 Recommendation GP-3?

8 DELEGATE POWERS: And that Committee Recommenda-
9 tion GP-3 has been approved, with amendment.

10 THE CHAIRMAN: Without amendment.

11 DELEGATE POWERS: I am sorry -- strike the
12 "with amendment" and say "approved."

13 THE CHAIRMAN: Is there a second?

14 (The motion was duly seconded.)

15 THE CHAIRMAN: All in favor, signify by saying
16 Aye; contrary, No.

17 The Ayes have it. It is so ordered.

18 (The mace was replaced by the Sergeant at Arms.)

19 (Whereupon, at 12:25 p.m., the Committee of
20 the Whole rose, and the Convention reconvened.)

21 THE PRESIDENT: The Convention will please

1 come to order.

2 On behalf of the Committee of the Whole the
3 Chair reports that the Committee of the Whole had under
4 consideration Committee Recommendation GP-3. and has
5 the
6 approved/Committee Recommendation.

7 Committee Recommendation GP-3 is referred to
8 the Committee on Style, Drafting and Arrangement.

9 The Chair further reports that the Committee of
10 the Whole has had under consideration Committee Recommenda-
11 tion LG-1, still has it under consideration, and de-
12 sires leave to sit again.

13 The Chair recognizes Delegate Powers.

14 DELEGATE POWERS: Mr. President, I move we re-
15 cess until 2:00 p.m.

16 THE PRESIDENT: Is there a second?

17 (Whereupon, the motion was seconded.)

18 THE PRESIDENT: The Chair recognizes Delegate
19 Boyer.

20 DELEGATE BOYER: Mr. President, reluctantly
21 but necessarily I must recall the General Provisions Committee
to a meeting immediately. We will meet from 12:30 to

1 1:00, and I must sincerely emphasize it will be incumbent
2 upon every committee member to be present at that time.

3 THE PRESIDENT: Delegate Scanlan.

4 DELEGATE SCANLAN: There is an important meeting
5 of the Rules Committee immediately following the adjourn-
6 ment of this session in the basement of the Shaw House.

7 THE PRESIDENT: Delegate E. J. Clarke.

8 DELEGATE CLARKE: Mr. President, I would like
9 to record my presence.

10 THE PRESIDENT: In accordance with the previous
11 practice, I will ask all Delegates not present during roll
12 call who desire to indicate their presence to do so now by
13 the roll call board.

14 Delegate Bamberger.

15 DELEGATE BAMBERGER: Mr. President, I would
16 like to welcome to this Convention in the gallery above
17 the rostrum 102 students from the 11th and 12th grade of
18 Western High School in Baltimore who are here with their
19 teachers, Mrs. Joiner and Mrs. Milstein.

20 THE PRESIDENT: We are delighted to have
21 them here.

1 (Applause.

2 THE PRESIDENT: Are there any further announce-
3 ments?

4 If not, all in favor of the motion to recess
5 until 2:00 o'clock signify by saying Aye; contrary, No.

6 The Ayes have it. It is so ordered.

7 (Whereupon, at 12:30 p.m., the Convention
8 recessed, to reconvene at 2:00 p.m. of the same day.)
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A F T E R N O O N S E S S I O N

November 14, 1967 - 2:00 p.m.

THE PRESIDENT: The delegates will please
come to order.

We have a few matters to attend to in the Convention. To go back to the agenda, motions and resolutions: Does the Clerk have any resolutions?

Resolution No. 20, the Clerk will read the Resolution.

MR. QUILLEN: Resolution No. 20, by Delegate Wheatley: A Resolution to add a new Rule 54 immediately following Rule 54 to limit amendments on the third reading.

THE PRESIDENT: Resolution No. 20 is referred to the Committee on Rules, Credentials, and Convention Budgets.

Committee Reports: The Clerk calls my attention to the fact we are proceeding illegally.

Roll call: Have all delegates answered roll call? The Clerk will record the roll call.

There being a quorum present, the Convention is in session.

1 Committee Reports: Committee Recommendation
2 EB-1. The Clerk will read the Recommendation.

3 MR. QUILLEN: Committee Recommendation No. EB-1,
4 by the Committee on the Executive Branch, Gerald D. Morgan,
5 Chairman.

6 A Recommendation that the Constitution include
7 an Article establishing the Executive Branch of the State
8 Government to read as follows:

9 THE PRESIDENT: Committee Recommendation EB-1
10 is referred to the Committee of the Whole.

11 I call your attention to the fact there is
12 accompanying this Recommendation Committee Memorandum EB-1.
13 I believe the Recommendation is printed and distributed,
14 but the Memorandum has not been printed. It will be printed
15 later.

16 I also call to your attention that this differs
17 from Committee Report EB-1 that you received several days
18 ago. Committee Report EB-1 dealt with certain matters
19 not to be included in the Constitution. Committee Recom-
20 mendation EB-1 deals with matters to be included in the
21 Constitution.

1 Are there any other Reports of Committees?

2 Are there any other motions?

3 The Chair recognizes Delegate Powers.

4 DELEGATE POWERS: Mr. President, I move the
5 Convention resolve itself into the Committee of the Whole
6 for the purpose of consideration of orders of the day,
7 n accordance with debate control and limitations set
8 forth in Debate Schedule No. 3 previously adopted, and
9 Debate Schedule No. 4, now on the desks of all the delegates.

10 THE PRESIDENT: Is there a second?

11 (The motion was duly seconded.)

12 THE PRESIDENT: The question arises on the mo-
13 tion to adopt Debate Schedule No. 4, and for the Convention
14 to resolve itself into the Committee of the Whole for
15 further consideration of general orders of the day under
16 Debate Schedules 3 and 4. All in favor, signify by saying
17 Aye; contrary, No.

18 The Ayes have it. It is so ordered.

19 (Whereupon, at 2:07 p.m., the Convention re-
20 solved inself into the Committee of the Whole.)

21 (The mace was removed by the Sergeant at Arms.)

1 THE CHAIRMAN: The Chair recognizes Delegate
2 Moser, Chairman of the Committee on Local Government to
3 continue presentation of Committee Recommendation LG-1.

4 Delegate Moser.

5 DELEGATE MOSER: Mr. Chairman, ladies and
6 gentlemen of the Committee:

7 Just before the luncheon break I had described
8 what we mean by shared powers for counties. I had indicated
9 that what it means is simply this: that counties can act
10 freely designating the General Assembly, but the county
11 cannot act where a law of the General Assembly occupies
12 the field, as, for instance, a general law such as the
13 Uniform Commercial Code.

14 Second, that the county cannot act if the General
15 Assembly says the counties' agencies can't act in the
16 particular area, for instance, gambling.

17 What this means is left to the counties will be
18 all the purely local matters, salaries of county officials,
19 county roads, and power to meet local emergencies such as
20 those created by snow storms, hurricanes, things like that.

21 The Committee Recommendation rejected the express

1 powers approach as being unduly restrictive on the
2 rights of counties to deal with local matters. It would
3 thus reverse the Dillon Rule, which holds that local
4 units of government may exercise only such powers as have
5 been expressly granted by the State or which must neces-
6 sarily be implied from the express grant.

7 The shared powers approach permits freedom to
8 solve local problems at the local level. The General
9 Assembly would no longer have the burden of making specific
10 grants of power. each time a county wishes to enter a new
11 area of activity.

12 It avoids the difficulty inherent in the
13 express powers approach in that it recognizes that no
14 permanent line can be drawn in advance between those func-
15 tions which ought to be performed at the State level and
16 those which are purely local.

17 Nevertheless, I stress this as strongly as I
18 can, the power of the General Assembly to set general
19 policy in local matters remains absolutely supreme. At
20 any time it can withdraw powers from counties in order to
21 perform any function on a statewide basis, or in order to

1 reallocate powers to other units of government for more
2 effective provision of services.

3 The third problem, major problem area, is
4 limitation of local legislation, which is handled in
5 recommended section 7.06. Today local government in
6 Maryland is characterized by a higher degree of involve-
7 ment by the General Assembly in county affairs and in the
8 passage of local legislation than exists in most other
9 states. Home rule by itself lessens this involvement to
10 some extent. Shared powers will reduce this involvement
11 even more.

12 But the Committee recommendation in section
13 7.06 makes a specific prohibition against local laws,
14 a requirement that all laws with certain exceptions be public
15 general laws of Statewide application, and a restriction on
16 the now prevalent system of county exemptions from public
17 general laws. This will reduce public local legislation
18 even further.

19 The fourth problem about which you have been
20 reading recently in the newspapers is the interrelation-
21 ship of municipal corporations with the county and State.

1 Sections 7.07 through 7.09 relate to this. We resolved
2 here to preserve the home rule powers of existing municipi-
3 pal corporations and to permit both the counties and the
4 General Assembly to give municipalities additional powers.
5 The General Assembly will provide procedures for the
6 resolution of disagreements between the counties and the
7 municipalities not capable of resolution on a local basis.

8 This is in contrast to the present Constitution
9 under which both counties and municipalities have received
10 partial grants of powers from the General Assembly.

11 Counties cannot grant municipalities additional powers.
12 Since counties and municipalities have overlapping juris-
13 diction, competition for powers and resources has at times
14 occurred instead of cooperation.

15 New municipalities and other intracounty units
16 of government which we call civil units may be created
17 within the counties and will derive their powers from the
18 county, subject to procedures laid down by the General
19 Assembly.

20 The fifth area is multi-county government.
21 This is covered by recommended section 7.10.

1 Many present and future problems should be dealt with
2 on a regional basis, not on a county basis. There are
3 many needs requiring governmental action transcending
4 county boundary lines, such as planning, zoning, economic
5 development, sanitation, water supply, mass transit, water
6 and air pollution, and public health, just to name a few.

7 The present power of the General Assembly do
8 establish multi-county authorities and regional govern-
9 ments is preserved by recommended section 7.10. The
10 General Assembly has that power now.

11 In addition, the State and all units of local
12 government are permitted by recommended section 8.06 to
13 enter into agreements with other units of government, sub-
14 ject to limitation provided by law.

15 Having touched in a general way upon the main
16 issues faced by the committee, and given in general form
17 some of the resolutions we recommend, let's turn to a
18 section by section analysis of the Committee Recommendation.

19 Section 7.01 contains definitions. I have
20 already described what this does. I shan't read the article,
21 or rather the section, itself. I think it is fairly clear.

1 County is defined, municipal corporation is
2 defined, civil unit is defined, and region is defined.

3 Baltimore City, as you know, is presently
4 treated as a county for most purposes, but for some purposes
5 it is treated as a municipality, and inclusion of Baltimore
6 City within the term county is for clarity.

7 This makes clear, of course, that new counties
8 formed would be also included within the definition of
9 county.

10 Municipal corporations are defined so as to
11 exclude Baltimore City and the counties. Multi-county
12 governmental units such as the Washington Suburban Sanitary
13 Commission are also clearly excluded. I say this again
14 because in some sections of the existing Constitution there
15 is a specific exclusion, but it is perfectly clear under
16 this definition that multi-county authorities would be
17 excluded.

18 Civil units is used to mean a unit of local
19 government other than a municipality furnishing county
20 services in part of a county which is entirely within
21 and subject to the control of the county. The term does

1 not include a department of county government.

2 We will get into this in greater detail when
3 we discuss section 7.08, where the term is defined.

4 Sections 7.02, Establishment of Counties;
5 and 7.10, Establishment of Multi-County Governmental Units,
6 should be considered together. They deal with the power
7 of the General Assembly to establish counties and
8 multi-county governmental units.

9 In section 7.02 and 7.10 and the entire Local
10 Government Article, the use of the phrase "by law," you
11 will note its use here with respect to multi-county govern-
12 mental units particularly, is meant to exclude any require-
13 ment that the law be a public general law as defined in
14 section 7.06.

15 Section 7.02 and section 7.10 require, speaking
16 about the two sections together -- I understand they are
17 scheduled for debate and action together -- they require a
18 referendum in each county affected / before a change in county
19 boundaries can be effected, merger, dissolution, that type
20 of thing. They permit the General Assembly to provide
21 local referendum for approval of a law establishing or

1 affecting the powers of a popularly elected, representative,
2 regional government.

3 I will read 7.02: The General Assembly may
4 provide by law for the establishment, merger, dissolution,
5 and alteration of boundaries and counties, but no such law
6 shall become effective until submitted to the voters of
7 each county affected and approved by a majority of those
8 voting on the question in each such county.

9 The entire thrust of the Local Government
10 Article is toward making counties stronger. With
11 counties being strengthened to provide a greater measure
12 of areawide control over policy making and services, it is
13 not likely that existing county lines will be changed
14 in the foreseeable future. Therefore, we recommend
15 that section 7.02 provide for this mandatory referendum.

16 This differs from the Commission draft section
17 7.02 which required a three-fifths vote of the General
18 Assembly. It is more in accord with the present Constitu-
19 tion, Article XIII, section 1, but differs in minor respects
20 from it. That section requires a referendum in the district
21 or area affected, and just the area, not a countywide

1 referendum.

2 Section 7.10 provides this: The General
3 Assembly may provide by law for the establishment of powers,
4 change, merger, dissolution, and alteration of boundaries
5 of multi-county governmental units, intergovernmental
6 authorities, popularly elected representative regional
7 governments, and other units of local government, but
8 excluding municipal corporations and civil units.

9 The General Assembly may provide referenda for
10 any law establishing a popularly elected representative
11 regional government or affecting its power.

12 This, of course, provides permissive referendum.
13 The reason for exclusion of municipalities and civil units
14 here is they are taken care of further along.

15 The most important feature of this provision
16 is it permits the General Assembly wide flexibility in
17 structuring local government. Action by public general
18 law is not required, for the General Assembly may deal with
19 situations separately as the specific circumstances may
20 arise.

21 We can't today predict the best structure for

1 strong, viable State and local government in Maryland.
2 Limitations on the legislative power freely to
3 establish change and dissolve all units could prove trouble-
4 some in ways which are now incapable of predicting. There-
5 fore, the committee feels strongly that flexibility
6 must be preserved, even when it may be doubtful whether
7 certain options should be exercised.

8 For instance, most knowledgeable persons agree
9 single-purpose, non-representative authority should not
10 be encouraged, and that a proliferation of such agencies in
11 the same region is undesirable.

12 However, since these authorities frequently
13 represent the only method of dealing with multi-county
14 problems, there is this permissive provision in the Article.

15 The committee deems it urgent that multi-
16 county units, whether popularly elected or not, and whether
17 called regional government or something else, be controlled
18 by the General Assembly. Therefore, it does not believe
19 a mandated referendum should precede the establishment of
20 a so-called regional government. We believe that this
21 would provide or create an imbalance in local governmental

1 structures, that it would force the legislature to use
2 single purpose authorities, and for a number of other reasons
3 outlined on page 13 -- I will not go into them further.

4 Recognizing that the General Assembly might wish
5 to submit to a local referendum all or part of a law
6 creating a popularly elected representative regional
7 government performing many functions if the need for such
8 government arose, the committee has agreed the General
9 Assembly should be permitted, but not required, to do so.
10 But that the type of referendum should be left to the Gene-
11 ral Assembly. This approach will permit the legislators
12 to gauge the temper of the times and also to fit requirements
13 of adoption of the law to the type unit being created
14 and its proposed power.

15 The General Assembly as the elected representa-
16 tive of the people must be relied upon to set the proper
17 balance between local interests on the one hand, and wel-
18 fare of the State on the other.

19 We have this specific provision permitting it,
20 a referendum in case of regional government, because it is
21 not now clear under present law that the General Assembly

1 could do that. There is extensive discussion of this
2 I think in connection with the referendum provision. But
3 to make sure they can do it, we provide it.

4 We do not recommend inclusion in a new Consti-
5 tution of all the detail regarding popularly elected,
6 representative, regional governments contained in the
7 Commission draft section 7.03 through section 7.05.
8 Some committee members believe regions should be created
9 now by one method or another. However, all of us agree
10 that unless either the General Assembly is mandated by the
11 Constitution to divide the State into regions now, or the
12 Constitution itself creates the region, these provisions are
13 unnecessary, and indeed might restrict the General Assembly
14 in establishing regional governments later on if they
15 wish to do so.

16 Section 7.03 provides for the structure of
17 co-nty government. The first sentence, "Each county shall
18 have a written instrument of government which establishes
19 the structure of its government" requires home rule for all
20 counties. We use the term "instrument of government"
21 deliberately. It includes the term "charter," but charter

1 has in certain areas of the State acquired a rather limited
2 meaning. "Instrument of government created by a county
3 charter" borders on that. To many people it means a form
4 of government requiring a separate governing council.
5 Such is unnecessary under the county home rule amendment,
6 Article XI(a) of the existing Constitution, but people
7 believe it is.

8 Moreover, charter is a term charged with
9 emotion in parts of the State. There are violent anti-
10 charterites and pro-charterites. "Instrument of government"
11 tends to permit continuation of a combined executive-
12 legislative form of government in smaller counties if the
13 people want it. Always, however, an "instrument of govern-
14 ment" must be adopted.

15 In order to make clear to the layman that we
16 intend a broader meaning than charter, than the word "charter"
17 possibly means, in order to remove arguments between pro-
18 charterites and anti-charterites in debates on the ratifi-
19 cation of the new Constitution we adopted the term "instru-
20 ment of government."

21 The second sentence, "Within one year following

1 the adoption of this Constitution the General Assembly shall
2 provide by public general law choice of procedures by which
3 an instrument of government in a county may be proposed."

4 Article XI(a) of the present Constitution contains elaborate
5 provsiions for formation of home rule governments for
6 counties. We believe such detail should not be included
7 in the new Constitution, and the second sentence, requiring
8 the General Assembly to provide choice of procedures by
9 which counties may adopt an instrument of government clearly
10 directs the General Assembly to provide more than one
11 procedure, so that the county can select among two or more.

1 Let me make clear that in view of the dis-
2 cussion which lasted a good part of the morning that there
3 is some difference here. What we are saying is the
4 General Assembly shall act. We do not mean may, we
5 mean shall.

6 Along with this we are probably going to
7 recommend adoption of interim provisions which would
8 continue Article 11-A of the Constitution and also sec-
9 tion or rather Article 25-A. So that there will be
10 something there for the counties to act under.

11 I want to make it clear this is not a self-
12 executing proposal but that we depend on the General
13 Assembly to act and we are not fearful of the problem that
14 a court could not make them act because obviously they
15 will act in this area.

16 The third sentence clarifies under any alterna-
17 tive permitted by the General Assembly the governmental
18 instrument cannot become effective until it is approved
19 by the affirmative vote of the majority of the voters in
20 the county voting on the question of whether to adopt
21 or to reject it.

1 The fourth sentence is intended to assure that
2 an instrument of government provided by the General Assem-
3 bly which will be available and automatically will become
4 effective for each county before July 1, 1972, ^{which} has not
5 both prepared and adopted its own instrument of government.
6 The section does not require referendum to adopt that
7 instrument but under Section 704 which I will get to in
8 a moment the voters of a county will be able to initiate
9 amendments to it. This is similar to the procedure
10 followed with respect to mandatory municipal home rule
11 and Article 23 (b) of the laws of Maryland does have a
12 sample charter I believe for municipalities.

13 The date recommended for the deadline, July 1,
14 1972, coincides with the start of each county's fiscal
15 year.

16 The actual date is specified rather than provided
17 by calculation in order to emphasize the deadline.

18 The fifth and sixth sentences are designed,
19 one, to allow charter adoption procedures now under way
20 pursuant to existing law to continue as in Howard County
21 where the proposal will be submitted to vote in November

1 1968. Two, to make it clear that existing charters
2 qualify as instruments of government and need not be re-
3 adopted. This would apply in the five areas that have
4 charters now, Baltimore County, Anne Arundel County, and
5 so on. Three, to continue all existing governments,
6 including county commissioner forms, until they are
7 changed in accordance with the Constitution.

8 Section 704. I will read it. An amendment to
9 an instrument of government of a county shall become
10 effective only after the affirmative vote of a majority
11 of the voters of the county voting on the amendment. An
12 amendment may be proposed by the governing body, or by
13 petition of the voters in accordance with the instrument
14 of government or by such additional means as may be
15 provided in the instrument of government or by the
16 General Assembly by public general law.

17 The section makes clear by that whichever method
18 is utilized, amendment must be submitted to referendum
19 of a majority of voters of the county voting on the
20 amendment. You will note here this is an initiative
21 procedure too. The importance of this again is if

1 the legislature adopts or prepares an instrument and
2 some county has not adopted their own is to make sure if
3 the voters do not like it they can change it.

4 Recommendation Section 705, powers of counties,
5 is a chart of home rule for counties. It provides
6 counties share state powers rather than the General
7 Assembly be relied upon to grant specified powers to
8 counties.

9 As I said already, the shared powers concept
10 provided by this section clearly recognizes that the
11 General Assembly is vested with a plenary legislative
12 power under section 301 we adopted the other day in the
13 Committee of the Whole, that the legislature may by
14 public general law withdraw any and all power from the
15 counties. Until the General Assembly directly denies
16 the power by public general law or preempts the field
17 by legislation, each county will be free to perform
18 any function not denied to it with two exceptions:

19 First is the judicial power. Counties cannot
20 exercise judicial power. This is provided by Article 5
21 of the Constitution. This denial is not intended to

1 prevent counties from establishing boards and agencies
2 even though these might act, exercise a quasi-judicial
3 function.

4 Second, this excludes the power to tax from
5 among the powers shared by the counties. Several wit-
6 nesses, eminently knowledgeable in the area of Maryland's
7 financial and tax structure, testified any broad grants
8 of taxation power to counties could well result in either
9 decrease in the state's excellent credit rating or
10 proliferation of nuisance taxes or both.

11 Moreover, both the Committee on State Finance
12 and Taxation and the Legislative Liaison Committee
13 unanimously recommended that the tax power be constitu-
14 tionally retained in the state.

15 Accordingly, Section 705 provides the county
16 may only exercise such taxation powers as the state
17 grants to them. The grant of tax power may vary from
18 county to county as you know. Existing tax powers are
19 also preserved.

20 I should observe for the benefit of the style
21 drafting and arrangements that I think Section 8.01-1 of

1 State Finance and Taxation does basically what we do
2 here. It is meant to do the same thing I believe. It is
3 not necessary to have these in both places.

4 The major factors leading to our recommendation
5 being adoption of the shared powers approach are these:
6 First, the restrictive Dillon rule would be reversed.
7 I alluded to this earlier. What this says is that a
8 local unit can exercise only the following powers and
9 no other. Those granted in express words, those neces-
10 sarily or fairly implied in or incident to the powers
11 granted, those essential to the declared objectives and
12 purposes of the corporation, not simply convenient but
13 indispensable.

14 This narrow rule of interpretation arose in
15 1870. In fact before then. It was enunciated in an 1873
16 volume on Dillon on municipal corporations. This was
17 a later edition. I think he said the same in the first.
18 He enunciated a rule. Efforts to repeal the Dillon rule
19 by directing a broad construction in favor of granting
20 local units powers has, at least these efforts have been
21 notably unsuccessful.

1 New Jersey tried it in 1947 and we understand
2 it did not work. We are convinced the only way effec-
3 tively to exclude this 100-year-old restrictive rule
4 is to provide shared powers. Why do it?

5 For the benefit of this you need to revitalize
6 and stimulate county initiative to perform new functions
7 to exercise powers in local affairs to the extent the
8 General Assembly has not preempted the field. It will
9 make home rule more effective.

10 There is another reason. The General Assembly's
11 involvement in local matters will be reduced. Much of
12 the General Assembly's time and attention is now devoted
13 to county affairs either through enactment of local legis-
14 lation or, more relevant to this discussion, through re-
15 peatedly being called upon to grant specific additional
16 powers to counties.

17 Although mandated home rule will itself reduce
18 the quantities of local legislation, shared powers will
19 lessen the need to grant additional powers to counties.

20 This should result from each county's ability
21 to act unless a general law has denied the county the

1 right to act.

2 Moreover, under shared powers approach the
3 General Assembly must act positively and visibly to
4 preempt to the state some activity or to deny counties
5 the right to act in some field. The legislature cannot
6 deny a power simply by turning a deaf ear on county
7 governments when the representatives come in and ask for
8 the power.

9 There are other benefits. One is that the
10 county solicitors will know what the law is more precisely.
11 We have had a number of complaints from county solicitors
12 before the committee that they are unclear as to whether
13 or not they can act in an area. We go over this in the
14 committee report. I will not dwell on it.

15 Greater flexibility will also result if we
16 adopt the shared powers approach. When express powers
17 first were used, the powers of local governments were
18 more capable of division along functional lines because
19 governmental functions were less complex.

20 For instance, traffic was looked upon as purely
21 a local function. There was no difficulty with saying

1 that. Now obviously it is an areawide function and no
2 one would say traffic should be handled solely by a
3 municipality or county.

4 Another example is health function which used
5 to be simple but now is not. Shared powers approach is
6 more flexible in avoiding any attempts to allocate powers
7 to local units along functional lines. It will permit
8 the General Assembly to act by general laws to deny
9 counties the right to perform specific functions which
10 at any given time could better be performed on an area-
11 wide or state basis.

12 Let's turn to Section 706, general application
13 of laws. This section provides that with certain excep-
14 tions the plenary legislative power of the General Assembly
15 which is granted through 301 shall be exercised through
16 general laws. These are defined as laws which apply
17 throughout the state.

18 The intent of this section is to limit the
19 situation here to information existing when in many
20 cases public local laws regulating local matters were
21 made applicable to a single county or to a selected group

1 of counties.

2 In addition, this section prevents the General
3 Assembly from achieving the effect of a public local law
4 by enacting a general law and then saying it does not
5 apply at all in certain counties. This is specifically
6 prohibited.

7 I think that you can only look at this section
8 in context with what we have now so let's examine limi-
9 tations on public local legislation under the existing
10 Constitution very briefly.

11 Except with respect to charter counties and
12 Baltimore City, the General Assembly can now pass
13 public local laws for each county virtually without
14 restriction. Today the General Assembly is also free to
15 exempt any number of counties from a general law.

16 The present Constitution purports to limit
17 public local legislation with respect to charter counties
18 and Baltimore City in these words:

19 "No public local law shall be enacted for said
20 city or county on any subject covered by the express
21 Powers Act granted as above provided."

1 But it then says:

2 "Any law so drawn as to apply to two or more
3 of the geographical subdivisions of this state" -- meaning
4 one of the counties or Baltimore City -- "shall not be
5 deemed a local law within the meaning of this act."

6 The effect of this is a law providing for
7 Baltimore County and Baltimore City is a public general
8 law even though it relates to its internal affairs.
9 Even this ineffective limitation has been watered down
10 by cases.

11 For instance, the law authorizing Baltimore City
12 to license paperhangers has been held to be a public gen-
13 eral law, despite the language I just quoted above,
14 because the law might adversely affect state revenues and
15 because it would permit the city to exclude nonresidents
16 from acting as paperhangers in the city.

17 What then has been the effect of this constitu-
18 tional arrangement upon the General Assembly? If you turn
19 with me to page 39 of the Committee Memorandum I will
20 cite, I promise briefly, some figures.

21 You see from this that in 1902, 80 percent of

1 all laws passed by the General Assembly were local laws.
2 From 1919 to 1943 the percentage varied from 50 to
3 65 percent. In 1953 it rose up to 77 percent.

4 After the adoption of mandatory municipal
5 home rule, which also included a prohibition on local
6 laws with respect to municipalities, the percentage of
7 local laws was reduced but it still continues to be the
8 predominant product of the General Assembly.

9 In 1966, for instance, 55 percent of the laws
10 were local laws and in 1967, 52 percent.

11 I have already referred to these tables. I
12 will not dwell on them at length. Turn to page 41, table
13 1, if you will. It shows I think if you look at those
14 figures, 145, 146 at the top, that more than a third of
15 the local laws that have been passed by the counties,
16 had there been mandatory home rule in effect at that
17 time they would not have been passed by the General
18 Assembly. This would have reduced the percentage of
19 local legislation in the 1967 session from 52 to 34
20 percent.

21 While many of the remainder of so-called local

1 laws shown on table 1 may not be truly local in nature,
2 the adoption of recommended 706 plus other changes pro-
3 posed for the new constitution such as unified judicial
4 article, should eliminate another 141 local bills.

5 The whole effect of this procedure would reduce
6 the local legislation to 15 percent and these, as I said,
7 are really not truly local laws.

8 The detriment that the committee sees in public
9 local laws is not diversity of legislation from county
10 to county; rather, it is the enactment of local law by
11 the General Assembly usurps the function of duly elected
12 county officials and makes it difficult for the citizen
13 to fix responsibility for the legislation. The committee
14 believes that the General Assembly should primarily
15 devote its time and ability to matters of statewide
16 import and leave to the county governments the handling
17 of its internal affairs.

18 The first sentence of the section reads "except
19 as otherwise provided in this Constitution and except
20 with respect to appropriations and laws provided for and
21 regulating the powers of departments, agencies or

1 instrumentalities of the state performing a state and
2 not a local function." Then it goes on, this is the
3 limitation,"the General Assembly shall enact no public
4 laws and shall enact only public general laws defined as
5 laws which in their terms and effects apply throughout
6 the state."

7 I have already stated what the purpose of the
8 opening phrase is. It is to make clear that when the
9 phrase "by law" is used, it does not necessarily require
10 a public general law. There may be other limitations in
11 describing the particular law in the section of the
12 Constitution involved, notably 801-1 I think the Finance
13 Committee has recommended, that is a special uniformity
14 required in each of those cases.

15 Exception for appropriations is intended to
16 provide flexibility to permit the state to continue its
17 present system of reallocating taxes to the various
18 subdivisions in accordance with their needs.

19 The exception for state agencies is needed to
20 make clear the General Assembly may provide for state
21 agencies which it is not specifically authorized in the

1 Constitution to provide for by law. But the state agency
2 must perform the state and not a local function.

3 Maryland Port Authority, for instance, performs
4 a state function, even though one of the things it does
5 is to regulate traffic in Baltimore Harbor. An agency,
6 for instance, operating state parks or recreation areas
7 even though they may be located in just one county would
8 be serving a state function.

9 A state board regulating paperhangers in just
10 one county would violate the intent of the section because
11 it really is not a state function. A majority of the
12 committee is convinced the General Assembly through public
13 general law may reach problems of statewide significance
14 even though they may exist in one or more counties and
15 the requirement the General Assembly act through public
16 law is not unduly restrictive upon it. However, in order
17 to provide some additional flexibility, the second sen-
18 tence and third sentence should be read together in Sec-
19 tion 706, which reads as follows:

20 "The General Assembly may nevertheless enable
21 any county or counties to exercise any power or perform

1 any function denied to other counties subject to standards
2 as the General Assembly may prescribe. No county shall
3 be exempt from a public general law."

4 This sentence, that is, the second sentence,
5 is intended to permit the General Assembly to enable the
6 county governing bodies of one or more counties to enact
7 ordinances exercising a power or function which is
8 denied other county governments. It is intended, as I
9 mentioned before, some flexibility.

10 We all viewed the classification system which
11 was in the draft constitution with some degree of horror
12 because it really was not flexible and we were fearful
13 that it might create a different kind of public local
14 legislation. This provision I just read, local option
15 provision, would not permit the General Assembly directly
16 to pass local laws which the county government could pass.
17 Rather, it would allow the county governing body itself
18 to provide the law for some particular subject and until,
19 this is very important, until the county does act the
20 general law prevails. It is not an exemption. An ex-
21 emption is immediately effective. A county might be

1 completely exempted from the general law under the present
2 situation. This could not be done. This would not
3 become effective until the local county governing body
4 actually acted.

5 This would permit the General Assembly to
6 recognize special problems and institutions existing in
7 some counties and not in others.

8 For instance, it could be utilized to authorize
9 Montgomery County an elected school board or could permit
10 Baltimore City to elect its own school board. If Balti-
11 more City wished to pass a rent escrow ordinance, we
12 would intend the General Assembly could permit this not-
13 withstanding statewide landlord-tenant law. This I
14 emphasize. The General Assembly should do this only if
15 it determined the state as a whole did not need a rent
16 escrow law at that time or was not ready for one. This
17 is an important example, because this is just about what
18 happens right now.

19 Legislative Council I think is considering a
20 rent escrow law and probably are not going to the General
21 Assembly^{if} they enact one, but it is desperately needed in

1 Baltimore City and therefore the General Assembly should
2 have power under this new arrangement to permit this in
3 Baltimore City or any place else it is needed.

4 This is not the same as a local exemption and
5 I think this is fairly well clarified on page 27 of our
6 report.

7 The section as a whole is intended to prevent
8 General Assembly from enacting legislation with county
9 by county differentiation unrelated to the purpose of the
10 law, exemplified by liquor laws codified in Article 2 (b)
11 of the code. Permissible charges for liquor licenses
12 vary minutely from county to county as do hours of opera-
13 tion of licensees. Hours of operation could be handled
14 on some local option basis if the General Assembly
15 wanted to do it this way.

16 Let us turn to Section 707 and 709. These three
17 sections are intended to provide a unified arrangement
18 for municipalities and civil divisions. The committee
19 found that many municipal corporations have played and
20 continue to play a vital and necessary role in Maryland
21 government. In several counties municipalities provide

1 most of the local services available. In many other
2 counties municipalities provide some government services
3 such as sewerage and water which would not otherwise be
4 available to the residents in those areas.

1 On the other hand, we found that conflicts have
2 developed. I already mentioned these. They continue to
3 develop between the counties and municipalities. The
4 Committee also found that the extent of these conflicts is
5 not so great as many persons believe it to be. Perhaps the
6 problem creating the most conflict is the municipal annex-
7 ation of land outside the boundaries. This provision in
8 Article XXIII (a) now permits the free annexation of lands
9 without consent of the county. The county has no voice in
10 the matter.

11 Section 7.07 provides procedures with respect to
12 existing municipal corporations in these four areas. Dis-
13 solution, merger, withdrawal of existing powers and
14 changes of boundaries. That is increasing or decreasing
15 the boundaries. Any of these matters can be resolved at
16 the local level by agreements between county and municipality.
17 However, the General Assembly may also provide other pro-
18 cedures by public general law.

19 The Committee's recommendation retains for exist-
20 ing municipalities, I really want to emphasize this because
21 it is, I think, a matter of some misunderstanding, not

1 only their existing charter power, but also those powers
2 authorized by law, existing municipal corporations are per-
3 mitted by these existing laws to amend their charters.
4 The intention of this provision is to continue to permit
5 them to do that. Subject, however, to control by the
6 General Assembly.

7 7.08 affirms that the county shall have the
8 right to create new municipal corporations and civil units
9 as defined in Section 7.01. The need for a grass roots
10 local organization, whether incorporated or unincorporated,
11 has been recognized by this provision for civil units.
12 It would allow governmental forum for direct citizen par-
13 ticipation and solution of problems of less than county-
14 wide concern. The General Assembly is authorized, however,
15 to set up procedures and standards if desirable to provide
16 a degree of Statewide uniformity for civil units and also
17 for new municipal corporations.

18 Any new municipal corporation created by the
19 county may have their structure and powers determined by the
20 county. I have already mentioned that the General Assembly
21 may by general law enter into the field and establish

1 standards and procedures for this.

2 Section 7.09 makes clear the county can delegate
3 to and withdraw from municipalities within its boundaries
4 such additional powers as it wants to and that the General
5 Assembly also could do this.

6 Let me speak a little more about civil units, if
7 I may. I think, as you all are aware, no new municipalities
8 have been formed in this State since 1954 at which time
9 the legislature gave each county a veto over creation of
10 new municipalities within the county. It isn't likely
11 counties will create new municipalities in the future.
12 They may, but probably won't because it creates a power
13 structure within the county.

14 Yet testimony before the Committee indicated
15 an inability to provide services in some areas of some
16 counties where population concentrations exist. In just a
17 few years a number of counties will have 600,000 or more
18 people. Therefore, the larger counties need to form
19 civil units to provide county services to these areas of con-
20 centration. They can also provide, as I mentioned, a forum
21 for participation by citizens where they can go, can be

1 little city halls, they can go to the areas and be heard,
2 they know someone is listening to them.

3 The Local Government Article is short. Civil
4 unit concept, though new, I think is clearly defined in it.
5 We strongly urge that this provision be adopted.

6 Let us turn to Section 7.11. This section is in-
7 tended to limit the amount of authority which can be granted
8 or delegated to intergovernmental authorities to finance
9 their activities. Its purpose is not just to make clear in
10 the Local Government Article the limitations on the power
11 of authorities to tax. I mentioned that because in the
12 General Provisions an article, rather a section, that is
13 being recommended by State Finance and Taxation will indi-
14 cate only a representative government can, popularly
15 elected representative government, will have power to tax.

16 It is also to make crystal clear that authorities
17 may collect taxes which have been imposed by another
18 government and impose service and benefit charges. This
19 is essential if operations such as the Maryland Port Auth-
20 ority and Washington Suburban Sanitary Commission are to
21 continue.

1 Section 7.12 related to credit limitations on all
2 local governments. It is intended to have the same mean-
3 ing as the Commission Draft Section 7.13, but we organized
4 it based on the latest information we had out of Finance
5 and Taxation to cause it to coincide with a similar
6 provision relating to a limitation on State credit. This
7 is, I think, Section, Recommended Section 6.02, in SF-C(3).

8 A gift of assets requires a unit to provide cur-
9 rently the money or other assets to be transferred, and
10 for this reason there is no additional vote required of the
11 governing body to do that.

12 On the other hand, a gift of credit or loan of
13 credit or loan of assets unlike an immediate gift of assets
14 may involve a continuing liability of the unit for the
15 credit extended or the asset length. Accordingly we agree
16 that local government should be required to provide for
17 these actions by a 3/5 majority of their governing boards
18 just exactly as the State is required. We make it clear,
19 however, that the General Assembly may if they want to impose
20 additional credit limitation on units of local government.
21 This is clearly intended by this provision.

1 The last provision. Section 8.06. Intergovern-
2 mental cooperation and agreements. This provision is in-
3 ended to make clear that county governments, municipalities,
4 State government or any government can agree among them-
5 selves with respect to any functions or powers that they
6 have for the joint performance of these activities.

7 I emphasize, however, that this is subject to the
8 provision on Line 6 in the Committee recommendation, Page
9 34, except as limited by law. This means that the General
10 Assembly may limit it, county government may limit it,
11 any governmental body may limit this. It clearly keeps
12 the right to agree within control.

13 The words which we use here "may cooperate or
14 agree" allow for voluntary as well as contractual inter-
15 governmental activities that are jointly agreed upon, and
16 as I mentioned before, are within the powers of the par-
17 ticular unit of government.

18 The State may pass by law limitations on inter-
19 governmental cooperation and agreements that would be
20 applicable to all governmental units within the State.

21 You undoubtedly know the trend in Maryland because

1 of our proximity to Pennsylvania, West Virginia, Virginia,
2 and so on, toward a lot of intergovernmental cooperative
3 agreements. There are such things as I think there are
4 some airports in West Virginia that some of the Western
5 Maryland units use. There are combined arrangements for
6 water and sewer services in Western Maryland. These
7 arrangements do in very healthy fashion transcend State
8 lines, they are purely cooperative by agreements of govern-
9 mental units involved.

10 This is important, of course, in the Washington
11 area. Montgomery County, Prince Georges County, the
12 District of Columbia and Virginia, they pledged substantial
13 funds for instance to establishing transit facilities.
14 They have a council of governments over there. If this
15 council of governments wanted to undertake some particular
16 endeavor together on a joint basis, this is designed to
17 permit it and to make clear that it can be done.

18 I want to thank all of you for your patience as I
19 have gone through this. I will try to answer any ques-
20 tions.

21 THE CHAIRMAN: Are there any questions of the

1 committee chairman for purposes of clarification? Dele-
2 gate J. Hodge Smith.

3 DELEGATE J.H. SMITH: Montgomery County has a dis-
4 pensary system I believe unique in the State. Would you
5 please explain to me what legislative procedures both at
6 the State level or county level will be necessary to con-
7 tinue such system?

8 DELEGATE MOSER: I believe that may be provided
9 for in Article II(b) as it now stands. It would be pre-
10 served undoubtedly under interim provisions we adopt.
11 That is a short answer to it.

12 It could continue under this arrangement in 7.06,
13 second sentence of it.

14 Are there any other questions?

15 DELEGATE ADKINS: Questions on the entire Article
16 are in order?

17 THE CHAIRMAN: Yes.

18 DELEGATE ADKINS: I direct a question to the
19 Chairman in connection with 7.07. When you use the terms
20 "have their existing powers withdrawn", first does that
21 include the existing power to amend, and secondly, would

1 it include existing powers to amend, to include a power
2 which they might presently be permitted to have under
3 Section 11(e), or are they limited to only those powers
4 which are currently expressed in their current charters?

5 DELEGATE MOSER: The answer to both questions is
6 unequivocally Yes. It is intended by this provision that
7 municipal corporations will continue with full Home Rule
8 powers. This means specifically in answer to Delegate Ad-
9 kins' question that they will have the power to amend their
10 charters which is now contained in, I guess, Article XI(e)
11 Section 4, of the Constitution. It also means they can
12 increase powers within whatever legislation the legislature
13 from time to time has in effect with respect to this. It
14 is Section 3.11(e) which reads "any such municipal corpora-
15 tion now existing or hereafter created shall have the power
16 and authority, (a), to amend or repeal an existing charter
17 or local laws relating to the incorporation, organization,
18 government, or affairs of said municipal corporation here-
19 tofore enacted by the General Assembly of Maryland and,
20 (b) to adopt a new charter and to amend or repeal any
21 charter adopted under the provisions of this Article."

1 It is the intention of the Committee, I think
2 think this is made clear, to continue that provision as well
3 as most of the other provisions of 23(a), which is the
4 municipality section as part of the schedule accompanying
5 the Constitution.

6 THE CHAIRMAN: Which are you referring to as you
7 say "schedule"?

8 DELEGATE MOSER: Schedule of these laws.

9 THE CHAIRMAN: Schedule of legislation?

10 DELEGATE MOSER: Yes.

11 THE CHAIRMAN: Delegate Maurer.

12 DELEGATE MAURER: I have a question about Section
13 7.06 and particularly the sentence on Page 6 of the
14 Committee Report referring to the difference.

15 Question one: Under the natural resources item
16 we adopted this morning, could the General Assembly pass
17 laws which contain county-to-county variations and thus be
18 exempted from Section 7.06?

19 DELEGATE MOSER: I think the answer to that ques-
20 tion is Yes, with some minor limitation. What this
21 Committee intends, the Local Government Committee, is that

1 where the phrase "by law" is used anywhere in the Consti-
2 tution that this means whatever the law is subject to,
3 whatever limitations are provided in that section that
4 uses the term "by law". Therefore, if under that
5 resources provision, the General Assembly operated in just
6 an area, let's say one county, and passed a law relating to,
7 if I may refer to them, oysters, they could do this in a
8 limited area wherever the problem arose. The important
9 point is that that section which we passed this morning
10 just fixes entirely and clearly this aspect as a State
11 function and doesn't mean it is denied the counties; but it
12 is a State function.

13 Let me qualify it in this regard. I don't believe,
14 it is not intended, that under that provision such as the
15 natural resources provision that the legislature could
16 interfere with the affairs or government, if I may use
17 that expression of a county directly by saying to the
18 county, one county, You got to do this, your government
19 must provide this, but so long as it is a State function,
20 I think it would be pretty clearly permitted.

21 THE CHAIRMAN: Delegate Maurer.

1 DELEGATE MAURER: I would like to raise it in
2 another area concerning public education. In the present
3 Constitution and presumably in an Article which will be
4 presented to us, public education would be a matter left
5 to the General Assembly.

6 Assuming the wording came out that the General
7 Assembly "shall by law" or "the State shall by law provide
8 free public schools", would this too provide opportunity
9 for county-to-county variation in setting up school boards
10 and thus exempting them from 7.06 and permitting the kind of
11 variation which now exists, that is, an elected school
12 board in Montgomery County and various kinds of appointive
13 boards elsewhere?

14 DELEGATE MOSER: Yes, I think it would.

15 DELEGATE MAURER: Would it then invalidate the
16 comments you made that under local option the County Council
17 in Montgomery County could decide whether there would be
18 an elected or appointed school board?

19 DELEGATE MOSER: I think the General Assembly
20 could do it either way. That is to say, they could pro-
21 vide for it themselves as they do now in Article 77, or

1 if they wanted to, they could permit the local areas to
2 provide that if they wish.

3 THE CHAIRMAN: We having further questions, may
4 the Chair comment with respect to the first question
5 raised by Delegate Maurer. It is quite obvious that in
6 some committee recommendations which have been filed and not
7 yet considered and in some of the committee recommendations
8 which have been considered by the Committee of the Whole,
9 the expression "by law" has been used without clear indi-
10 cation as to whether it is meant in those other sections
11 by public general law or by law other than public general
12 law.

13 For this reason we have requested the Committee
14 on Style to pay particular attention to this so that there
15 will be uniformity in the entire Constitution with respect
16 to the meaning of the term "by law", "by public general
17 law", and so forth. Delegate Case.

18 DELEGATE CASE: Mr. Chairman, focusing your atten-
19 tion on Section 7.10, the establishment of multi-county
20 governmental units, I note that the General Assembly may
21 provide by law for a change of boundaries, et cetera, of

1 these various types of, new types of government.

2 Then the section goes on to provide for a permissive
3 referendum, in Lines 42 through 45, inclusive, the permissive
4 referendum seems to me to refer to the government and not
5 to the boundaries.

6 I am wondering if I am correct in this.

7 DELEGATE MOSER: I am reading it again. It would
8 refer to any phase or it is intended by the Committee to
9 refer to any phase of setting up the government or
10 affecting its powers. It would be the Committee's inten-
11 tion, I state this clearly, to include the boundaries of
12 the region within that permissive referendum if the
13 General Assembly wished to do so.

14 THE CHAIRMAN: Delegate Case.

15 DELEGATE CASE: Mr. Chairman, I know the dichotomy
16 between establishment or changing boundaries of counties
17 on the one hand and changing their government on the other.
18 That is to say, I think this was implicit in the Commis-
19 sion's Draft, too; there was a procedure for adjusting
20 boundaries on the one hand, and there was a provision for
21 the creation of governments within the new boundaries on

1 the other.

2 Is it your testimony here that the Section 7.10
3 at least implies that the referendum is to cover both
4 these and not just one of the elements?

5 DELEGATE MOSER: The intention is, it may cover any
6 aspect of the creation of a popularly elected representa-
7 tive regional government. The answer is Yes, it is the
8 intention.

9 THE CHAIRMAN: Delegate Case.

10 DELEGATE CASE: Whether it be the county or the
11 charter on the other?

12 DELEGATE MOSER: Yes.

13 DELEGATE CASE: All right. Since some of the
14 terms used in this recommendation are new to many of us,
15 certainly new to me, I have spent quite a few years of my
16 life dealing with local government, I am wondering if you
17 would for the record define each of these terms and give
18 an example. The first is multi-county governmental unit.

19 DELEGATE MOSER: An example of this would be, I
20 suppose, the Washington Suburban Sanitary Commission. It
21 simply is a unit that transcends county boundary lines.

1 It could include all of two counties or parts of two coun-
2 ties.

3 THE CHAIRMAN: Delegate case.

4 DELEGATE CASE: The second is intergovernmental
5 authority. Would you distinguish between the first and the
6 second?

7 DELEGATE MOSER: I am not sure you really can. Let
8 me give another example, if I may, of the first and indi-
9 cate how that particular example may differ from the sec-
10 ond.

11 I think that multi-county unit, governmental unit,
12 might also be the Maryland National Capital Parks and
13 Planning Commission or might be the Regional Planning
14 Council.

15 Certainly, the Baltimore Regional Planning Council
16 would not be an intergovernmental authority as such.

17 An intergovernmental authority, another example
18 would be, say the Maryland Port Authority. I would think
19 that would be intergovernmental authority. It is a State
20 agency also. However, I don't believe that would be
21 looked upon as a multi-county governmental unit.

1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: Can you just briefly tell me how I
3 am to distinguish between a unit on the one hand and
4 an authority on the other, or is it possible?

5 DELEGATE MOSER: I don't know it is except in the
6 sense that an authority is something like the Port Auth-
7 ority that exercises a function as does the Maryland Port
8 Authority in an area that would lie between two governments.
9 The multi-county governmental unit , as I say, would include
10 something like the Planning Commission, that is the
11 Regional Planning Council, which really isn't an authority.

12 Another difference would be this. An intergovern-
13 mental authority might involve a municipality and a
14 county. This would not be, of course, a multi-county
15 governmental unit.

16 THE CHAIRMAN: Delegate Case.

17 DELEGATE CASE: Does an authority have more
18 authority than a unit?

19 DELEGATE MOSER: It would depend on the law creat-
20 ing it.

21 THE CHAIRMAN: Delegate Case.

1 DELEGATE MOSER: If you have something more
2 specific in mind than you are getting from me, go ahead
3 and state it, because I would be interested. If you are
4 simply trying to clarify the record, and you feel it has
5 been clarified, fine.

6 DELEGATE CASE: I am in the happy position of ask-
7 ing questions here. I frankly don't know the answers to
8 these.

9 DELEGATE MOSER: I am trying to answer by giving
10 examples.

11 THE CHAIRMAN: Delegate Case.

12 DELAGATE CASE: Would you define for us and give
13 an example of a popularly elected representative regional
14 government?

15 DELEGATE MOSER: Well, I would say this. That pop-
16 ularly elected representative means that the governing
17 board of the particular bodies are elected for that pur-
18 pose. This means it would not include an agency such
19 as the Washington Area Transit Authority which may contain
20 on its governing board elected officials from Montgomery
21 County and Prince Georges County and areas like that.

1 A regional government is anything that covers
2 the region which is defined in 7.01 as an area comprising
3 all or parts of two or more counties. It would be any
4 governmental unit which acts in that area. It could
5 for instance be a mass transit authority, if the board
6 members were popularly elected.

7 THE CHAIRMAN: Delegate Case.

8 DELEGATE CASE: Could, for example, a multi-
9 county governmental unit have as its governing head a
10 popularly elected representative regional government?

11 DELEGATE MOSER: No. Put it this way. I think you
12 included too much with your question if I may say that.
13 Multi-county governmental unit would not be an -- well,
14 put this this way.

15 If a multi-county governmental unit has elected a
16 popularly elected representative board, then it becomes a
17 regional government in effect as the term is used here. It
18 becomes a popularly elected representative regional govern-
19 ment.

20 THE CHAIRMAN: Delegate Case.

21 DELEGATE CASE: Then it would be possible for the

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1 THE CHAIRMAN: 7.06, the last two sentences,
2 beginning in line 40. Would it be correct to say that the
3 last sentence, beginning in line 45, is not intended as a
4 limitation on the next to the last sentence, beginning in
5 line 40, but that the converse is intended?

6 DELEGATE MOSER: That is a difficult one. It
7 uses the term exempt in the presently accepted way. It
8 is supposed to limit, to prevent an exemption absolutely.

9 The language in the second sentence, beginning
10 at 40 and going down to 44, is a different thing than
11 an exemption. It is in effect local option.

12 THE CHAIRMAN: Is it intended to mean the
13 same as if it had been phrased, for instance, no county
14 shall be exempt from a public general law; the General
15 Assembly may, nevertheless, and so forth?

16 DELEGATE MOSER: Yes. So long as one keeps in
17 mind, Mr. Chairman, the fact that this is not intended to
18 be an exemption and no county is to be exempt from a law.

19 THE CHAIRMAN: In section 7.10 Delegate Case
20 asked some questions. I was unclear as to part of your
21 answer; lines 34, 35, 36 refer to establishment, powers,

1 change, merger, dissolution and alteration of boundaries.
2 The last sentence, beginning in line 42, refers, says,
3 "The General Assembly may present referendum for any law
4 establishing a popularly elected, representative government,
5 or affecting its powers." It does not encompass the other
6 things mentioned in 34 and 36.

7 I thought at one point you said that was de-
8 liberate, but at another point I thought you said
9 the opposite.

10 DELEGATE MOSER: I said the opposite. I would
11 like to take another look at this, if I may, Mr. Chairman.
12 I said it encompassed boundaries, also. I think
13 the answer is it would affect boundaries when it is estab-
14 lished because part of this would be --

15 THE CHAIRMAN: Other than establish. Suppose
16 it had already been established and all you had was change
17 in boundary of an already established regional government,
18 or popularly elected, representative regional government?

19 DELEGATE MOSER: Then it would not be covered.

20 THE CHAIRMAN: Would not be subject to the
21 referendum?

1 DELEGATE MOSER: No, it would not be.

2 THE CHAIRMAN: I have no other questions.

3 If there are no others -- Delegate Miller, Bea-
4 trice Miller.

5 DELEGATE B. MILLER: In that case, would the
6 first sentence which says, "The General Assembly may provide
7 by law --" could that mean that the General Assembly may
8 provide by law and may provide for referendum for the
9 establishment of -- that is not grammatically correct,
10 but is that the meaning you wish in the first sentence?

11 THE CHAIRMAN: I am not sure I understand the
12 question. Would you repeat it?

13 DELEGATE B. MILLER: The first sentence now
14 reads, "The General Assembly may provide by law..."
15 The second sentence, as you stated, reads, "The General
16 Assembly may provide referenda for any law" -- but the law
17 is different, the law in the second sentence, than in the
18 first.

19 Does the power of referenda, did you wish
20 that to apply to all these words in the first sentence?

21 DELEGATE MOSER: Absolutely not. It is to have

1 a limited application. It may be, well it is to apply,
2 as I answered the Chairman's question, in the beginning
3 when lines are drawn and when powers are given or withdrawn,
4 given to or withdrawn from, only, only one thing, popularly
5 elected representative regional government.

6 THE CHAIRMAN: If Delegate Moser will return
7 to his seat on the floor, we will be ready for consideration
8 of amendments.

9 While he is doing that, let me call to your
10 attention in proceeding from now on we will be proceeding
11 under Debate Schedule No. 3. There will be no speech ex-
12 ceeding three minutes, except those permitted under the de-
13 bate schedule. The three minute limitation does not apply
14 to answering of questions by the committee chairman and
15 presentation of any amendments, other than those encompassed
16 specifically within the debate schedule. I don't believe
17 there are any in this schedule. It is limited to ten
18 minutes, including presentation time and time yielded in
19 answering questions; that is, a ten-minute limitation on the
20 sponsor of the amendment.

21 The first section for consideration is section

1 7.01. Are there any amendments to section 7.01?

2 The next section is 7.02. Are there any
3 amendments to section 7.02?

4 Delegate Moser.

5 DELEGATE MOSER: Mr. Chairman, my understanding
6 was 7.02 and 7.10 were going to be considered together.

7 THE CHAIRMAN: That is correct. Under the
8 Debate Schedule, we will take up 7.02 first. Considering
9 them together simply means we can consider amendments
10 to 7.02, then 7.10, and go back to 7.02 and consider them
11 as one package.

12 Delegate Cardin, do you have an amendment?

13 DELEGATE CARDIN: Yes, I do. In that case I
14 would like to call up Amendment C.

15 THE CHAIRMAN: Let me see first if there is any
16 amendment to section 7.02.

17 Is there any amendment to section 7.02? If not,
18 we will consider amendments to section 7.10. This will
19 be amendment 1. The Clerk will read the amendment.

20 MR. QUILLEN: Amendment No. 1 to Committee
21 Recommendation LG-1, by Delegate Cardin:

1 On page 4 in line 42 of section 7.10, Multi-
2 County Governments, strike out the word "may" and insert
3 in lieu thereof the word "shall."

4 THE CHAIRMAN: Is the amendment seconded?

5 (Whereupon, the amendment was seconded.)

6 THE CHAIRMAN: The amendment is moved and
7 seconded. The Chair recognizes Delegate Cardin to speak
8 to the amendment.

9 DELEGATE CARDIN: Mr. Chairman and fellow
10 Delegates:

11 I hope I do not appear to have sunk into a rut
12 in this particular provision for referendum, but they are
13 very close to me, and I would like to explain to you
14 why I feel that the word "shall" should be inserted instead
15 of "may."

16 First, there are many questions that come to
17 mind as I look at the sentence beginning in line 42, "The
18 General Assembly may provide referenda for any law estab-
19 lishing a popularly elected, representative regional
20 government, or affecting its powers."

21 As I read it, this is subject to interpretation

1 by those more enlightened in this area than I. This
2 refers to that referendum which would be placed on the ballot
3 by the General Assembly. I would like to make certain
4 in this particular section that we provide for referendum
5 by petition by the people.

6 Would it be possible if the General Assembly chose
7 not to provide referenda for them to deny the people the
8 right to petition this to referendum? That is the first
9 question that comes to my mind.

10 The second is, would this referendum, if it
11 becomes petitionable be local referendum or statewide
12 public general law, in which case we have two other questions.

13 We are not discussing public local law under this
14 but public general law, yet this would not necessarily
15 be a public general law since it may establish a very
16 restrictive, narrow multi-county governmental unit.

17 Another question is, where in this area do we
18 provide for the possibility of referendum by the people
19 and a non-suspendable law by the General Assembly? If the
20 General Assembly should so decide, the law establishing
21 this popularly elected representative government is

1 passed by a three-fifths vote and by some form of emergency
2 or non-suspendable legislation it could put into
3 operation in 1972 a regional government.

4 At the same time the people should have and
5 would have the right to petition this to referendum, so
6 that in 1974 we could conceivably have
7 on the ballot a referendum to remove this government and a
8 provision to elect the representatives.

9 I maintain all this can be eliminated if we
10 insert the word "shall" and make it mandatory for
11 such government to be placed on the ballot. Then there
12 will be no problem as to this.

13 I feel also that there is no provision in this
14 particular unit for change of regional government instru-
15 ments. I believe the draft Commission language did have
16 some provision. I see no provision in here similar to
17 section 7.04 which permits a change in instrument of
18 government.

19 As a matter of fact, I don't see any terminology
20 referring to the instrument of regional government. I am
21 left quite in the dark as to what this would mean.

1 I maintain that in this particular area by leav-
2 ing it in the nebulous or permissive area of "may," we are
3 opening ourselves to a tremendous amount of difficulty
4 and problem. Eventhough I understand the legislators
5 would in the best interests of the State provide only where
6 they feel it is necessary, it is conceivable the people would
7 not agree with it.

8 So, I respectfully suggest that the change
9 be made and the General Assembly provide for mandatory
10 referenda for regional government establishment as well as
11 they do in section 7.02 provide for mandatory referenda
12 to the county establishment.

13 THE CHAIRMAN: Delegate Moser.

14 DELEGATE MOSER: I am completely mystified by
15 Delegate Cardin's explanation of this change from "may"
16 to "shall." I don't believe that if she intends to supply
17 here some inadequacy, if that be it, in the suffrage and
18 elections article, that really this is what this would do
19 or what she intends to do.

20 If there is some other amendment to make to 7.10,
21 to include the word boundaries, or something like that, that

1 is one thing. If there is some intention to provide in the
2 suffrage and elections article for some kind of referendum
3 other than what is provided there now, then it should be
4 provided.

5 The only thing I can see that the change in this
6 one little word, maybe it is a big word, this "may" to
7 "shall" would do, is this: It would mandate, it would
8 require the General Assembly each time they establish
9 or were about to establish some sort of popularly elected
10 representative regional government, to provide for a referen-
11 dum. That is to say, they would have to do it.

12 This is completely, absolutely contrary to what
13 the committee intends.

14 If I may say so, the way it was put, the way
15 this amendment was put I think it can lead to large amounts
16 of confusion.

17 I think this is designed specifically to require
18 the legislature to have the voters approve any type of
19 regional government.

20 Let me talk to that point, because that is
21 really what it does. Let's face it. This is what it does.

1 It mandates this referendum upon the creation of a regional
2 government.

3 I think that we have all come to understand that
4 one of the most important aims of the Convention here has
5 been to strengthen the General Assembly. The local govern-
6 ment provisions seek to do this, while at the same time
7 strengthening local government. But the Local Government
8 Committee does not believe that any county should be so
9 strengthened as to be able to prevent the General Assembly
10 from effectively dealing with problems which extend beyond
11 county boundaries.

12 One other request of some county commissioners
13 and county executives was that no so-called popularly
14 elected, representative regional government be created by
15 the General Assembly without either, (1) the consent of
16 the county government; or (2) the consent of the voters
17 within each county.

18 Either way, the result is the same.

19 THE CHAIRMAN: Delegate Moser, your time is nearly
20 up.

21 DELEGATE MOSLER: How many minutes do I have to

1 speak on this?

2 THE CHAIRMAN: Three.

3 DELEGATE MOSER: I will give the rest of the
4 speech possibly later on. It gives one county a veto
5 over action of the General Assembly which may affect the
6 rest of the State.

7 It is difficult, really, to get into the de-
8 tail as we have to get into in this, but I want to simply
9 point out that what we have here is a very simple thing.
10 If the General Assembly wanted to create a popularly elected
11 mass transit authority, they might have just three people
12 provided to govern it, they couldn't do it unless they
13 submitted it to referendum of some kind. I submit
14 this is something we strongly oppose in committee.

15 A number of people on this committee went
16 along with the county boundary change arrangement, that no
17 county boundary can be changed without a mandatory referendum,
18 only if this referendum were permissive, not mandatory.

19 THE CHAIRMAN: Does any delegate desire to speak
20 in favor?

21 DELEGATE KOSS: I would like at some point to

1 have the opportunity to ask a question of Chairman Moser.

2 THE CHAIRMAN: Does any delegate desire to speak
3 in favor of the amendment?

4 Delegate Macdonald.

5 DELEGATE MACDONALD: Do I have an opportunity
6 to ask the sponsor of the amendment a question?

7 THE CHAIRMAN: You may do so now.

8 Will Delegate Cardin yield to a question?

9 DELEGATE CARDIN: I do.

10 DELEGATE MACDONALD: Delegate Cardin, if we
11 pass this amendment, the sentence would then read, "The
12 General Assembly shall provide referenda for any law
13 establishing this regional government. How many referenda
14 would that be?

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: I presume it would require
17 referenda in those counties or areas affected by the newly
18 proposed regional government.

19 THE CHAIRMAN: Delegate Macdonald.

20 DELEGATE MACDONALD: No further questions.

21 THE CHAIRMAN: Does any delegate desire to speak

1 in opposition?

2 Delegate Koss, you may put your question to
3 Delegate Moser now, if he will yield to a question.

4 DELEGATE MOSER: I yield.

5 THE CHAIRMAN: Delegate Koss.

6 DELEGATE KOSS: I am tempted to say something
7 else, but being a lady, I will not.

8 THE CHAIRMAN: Is this a question?

9 DELEGATE KOSS: 42, yes, where you provide,
10 "The General Assembly may provide referenda," I was
11 wondering what the intention of the committee was in terms
12 of the extent of that referendum, because nowhere does it
13 say the counties involved, or anything like that.

14 THE CHAIRMAN: Delegate Moser.

15 DELEGATE MOSER: The answer is that the
16 General Assembly was intended to be permitted to set up any
17 type of referenda it wanted to, as the situation might
18 require. They presumably wouldn't, if it were simply to
19 set up a three-man governing board, popularly elected, for
20 a transit authority or something like that.

21 On the otherhand, if it were a broad ranging,

1 regional government that was multi-functional and
2 took the water and sewer, power, transit, and garbage
3 collection and a lot of other things, was going to perform
4 this function in three counties or something, presumably
5 there would be either a county by county referendum or a
6 referendum of the entire region, whatever the General
7 Assembly felt would properly fit the case.

8 THE CHAIRMAN: Delegate Koss.

9 DELEGATE KOSS: Then my understanding
10 is that it is in the province of the General Assembly either
11 to put this to referendum on a statewide basis or the
12 area concerned. That is their option?

13 THE CHAIRMAN: Delegate Moser.

14 DELEGATE MOSER: It is not intended that they
15 affect the statewide basis referendum. It would, as any
16 public general law, presumably, would be subject to statewide
17 referendum automatically. It is not intended to limit that.
18 It is an additional referendum. In other words, it would
19 be a regional referendum or county by county.

20 THE CHAIRMAN: Delegate Koss.

21 DELEGATE KOSS: I understand, according to my

1 understanding, it is petitionable. But my question was
2 whether there would be the opportunity for duplicate referen-
3 dum on the same issues statewide.

4 THE CHAIRMAN: Delegate Moser.

5 DELEGATE MOSER: The answer is there might be
6 a statewide referendum, and there could also be a
7 regional referendum if the legislature so desired.

8 THE CHAIRMAN: Any other delegate desire to
9 speak in favor of the amendment?

10 Any delegate -- Delegate Hutchinson.

11 DELEGATE HUTCHINSON: Before I speak in favor
12 of the amendment, I would like to ask Delegate Moser a
13 question, if he would yield.

14 THE CHAIRMAN: Not at this point.

15 Delegate Pascal, do you desire to speak in favor
16 of the amendment?

17 DELEGATE PASCAL: Yes, sir.

18 Mr. Chairman, fellow Delegates: I think we
19 ought to recognize something, that when regional government
20 is created we are also giving them the prerogative of
21 taxing in the form of service charges in other items

1 here listed.

2 I can't recall in government how many times
3 you give a government agency the ability to tax and they
4 don't tax. I say that if we are going to form a regional
5 government that the only way people have of getting at
6 that regional government is at this point and not at the
7 point of imposing taxes. I would vote in favor of the
8 amendment, because I think the people should have the right
9 to decide whether regional government should be formed.

10 THE CHAIRMAN: Does any delegate desire to
11 speak in opposition to the amendment?

12 DELEGATE NEEDLE: Mr. Chairman.

13 THE CHAIRMAN: Delegate Needle.

14 DELEGATE NEEDLE: Mr. Chairman, I rise to oppose
15 the amendment proposed by my very able colleague from the
16 second district of Baltimore County. We certainly don't
17 vote as a block. This proves it.

18 Keep in mind, if you will, the present Constitu-
19 tion permits the General Assembly today to establish re-
20 gional governments, but apparently does not provide that
21

1 these regional governments shall be submitted to the lo-
2 calities involved for local referendum. Your Committee
3 on Local Government has provided the people of the State
4 with an additional safeguard they do not have now. That is
5 the permissive referendum, which the General Assembly may
6 impose.

7 Therefore, we are providing that additional
8 safeguard. To impose a mandatory referendum, I submit,
9 would be only giving lip service to the future establishment
10 of regional governments.

11 We are attempting to considerably strengthen
12 county governments, and I fear if they become substantially
13 strengthened it is entirely possible in the future they
14 may be very reluctant to relinquish any powers they have
15 gained. We would, in providing for mandatory referendum,
16 permit the tail to wag the dog.

17 I think the General Assembly must concern it-
18 self with statewide issues and the establishment of regional
19 governments is such a statewide issue.

20 To permit local parochialism by local veto of
21 particular counties to dictate to the General Assembly

1 policy in this area would be highly regressive when we
2 can now take a bold step into the future.

3 I suggest that you reject the amendment and
4 support the committee recommendation for a permissive
5 referendum, which was a consensus opinion, many of the
6 committee members feeling there should be no referendum
7 in this area whatsoever.

8 THE CHAIRMAN: Does any delegate desire to speak
9 in favor of the amendment?

10 Delegate Schloeder.

11 DELEGATE SCHLOEDER: Mr. Chairman, I rise to
12 direct a question to Delegate Moser on clarification.

13 THE CHAIRMAN: I rule that out of order at
14 this time. I will recognize you at the proper time.

15 Does any delegate desire to speak in favor of
16 the amendment? Does any delegate desire to speak in
17 opposition?

18 Delegate Winslow.

19 DELEGATE WINSLOW: Mr. Chairman, I should
20 like to point out to the members of the committee that this
21 entire section dealing with multi-county governmental

1 units is looking a rather considerable distance into the
2 future. There seems to be a misapprehension if this
3 section is adopted that at the very next session the
4 General Assembly is going to proceed to create regional
5 governments.

6 All the committee is interested in having done
7 here is to provide the possibility when the time is ripe
8 that the General Assembly may act. Rather than tie it up
9 at this point, when we haven't the slightest notion in
10 which direction it will be well for the General Assembly
11 to act, I should think it would be better to maintain
12 this entire area within the jurisdiction of the General
13 Assembly to deal with as the conditions prevail at that
14 time.

15 I should like to point out also, if I may, that
16 if the amendment which has been proposed should carry, then
17 every time that the General Assembly wished to add a simple
18 little power to an existing agency or to withdraw a simple
19 little power from that agency it would have to put it to
20 a vote. It would then read, as I have it, that the
21 General Assembly shall provide referenda for any law

1 affecting the powers of a regional government. I submit
2 to you this committee is hardly in position, it seems to
3 me, to require a referendum at every spot where the General
4 Assembly, in order to meet an immediate condition, should
5 have to put the question to a vote of the entire area.

6 THE CHAIRMAN: Does any other delegate desire
7 to speak in favor of the amendment?

8 Does any delegate desire to speak in opposition
9 to the amendment?

10 Delegate Gallagher.

11 DELEGATE GALLAGHER: Mr. Chairman and ladies
12 and gentlemen: If I may briefly share with you an experience,
13 I think it will be helpful.

14 In 1959 and 1960 I was chairman of a commission
15 which ultimately drew the legislation for the Baltimore
16 Metropolitan Transit Authority. I want to tell the
17 members of this committee that there is no more fascinating
18 psychological scare term than "regional government."

19 I want to tell you, any kind of regional
20 government arrangement has enough hurdles to jump in
21 a General Assembly without adding to it the additional

1 burden of mandatory referendum.

2 In that particular era, each State senator, of
3 course, had the power of veto, and I can assure you that
4 had it not been for some considerable arm-twisting, we
5 would have not had the, not only the Metropolitan Transit
6 Authority, but also the Port Authority, as well.

7 It would seem to me that it would be an un-
8 merciful sort of thing to do, a crippling blow to the
9 development of regional government to require a referendum
10 on all occasions.

1 I feel that there is enough built-in innate
2 resistance against regional government, people come for-
3 ward with the fact that it has foreign origins that exist
4 in nondemocratic nations, they have all sorts of devices
5 to impede passage of valuable legislation. I submit that
6 to require mandatory legislation in all cases would simply
7 be to set the cause of regional government back decades to
8 say the least.

9 I would urge you to vote against this amendment.

10 THE CHAIRMAN: Any delegate desire to speak
11 in favor of the amendment?

12 The Chair recognizes Delegate Rybczynski.

13 DELEGATE RYBCZYNSKI: I will take the place of
14 one speaking in favor but I really want to speak in the
15 place of peacemaker in this case. I think what is really
16 intended here by the maker of the amendment is to give
17 it -- I hope I am saying this correctly -- to give the
18 people the opportunity at referendum, I suggest we go
19 all the way back to the debate on Friday when we talked
20 about the very first sentence of the S&E Report No. 1.

21 I strongly suggest that in this case another

1 meeting even after this vote, another meeting of our two
2 very able committee chairmen will be very helpful so
3 that on second reading there might possibly be some new
4 thought brought forth on this floor.

5 Meantime, for the first time since I have been
6 down here I am going to pass on a vote.

7 THE CHAIRMAN: The Chair recognizes Delegate
8 Boyles to speak in opposition to the amendment.

9 DELEGATE BOYLES: The Committee on Local Govern-
10 ment worked hard to set up a system of local government
11 in this article to strengthen the counties. But we did
12 not do this at the expense of setting up 24 independent
13 kingdoms or republics in the State of Maryland.

14 If we limit the power of the General Assembly
15 with this amendment to do what they would like to do in
16 the case of larger than county problems, we have taken
17 from the General Assembly a valuable tool.

18 I realize the desire of the delegate from
19 Baltimore County is to safeguard what she feels are the
20 rights of people from Baltimore County. But I think the
21 rights of the people of the State of Maryland transcend

1 the rights of the people of Baltimore County.

2 THE CHAIRMAN: Any other delegate desire to
3 speak in favor of the amendment?

4 Delegate Cardin.

5 DELEGATE CARDIN: I have a question to ask
6 Delegate Winslow if he will yield.

7 THE CHAIRMAN: Before that I have to recognize
8 anyone desiring to speak.

9 Delegate Chabot, do you desire to speak in oppo-
10 sition?

11 DELEGATE CHABOT: Yes, sir. The ways in which
12 this amendment could tie the hands of the General Assembly
13 trying to proceed responsibly have been indicated. I
14 suggest also that this amendment would in no practical way
15 tie the hands of a General Assembly that was trying to
16 proceed in an irresponsible manner.

17 The amendment, the sentence as written with the
18 amendment would not specify the area within which the
19 referendum must be held. It would not specify the nature
20 of the vote needed to affirm the law or the amount of
21 vote needed to strike down the law.

1 It would suggest that there must be more than one
2 referendum held on the matter without specifying whether
3 or not there must in fact be more than one and, if so,
4 how many.

5 In short, I suggest that the amendment would not
6 at all accomplish the objectives of the maker of the
7 amendment but would only create problems which the maker
8 of the amendment probably did not intend to create by the
9 amendment. Consequently, I would suggest the amendment
10 be voted down.

11 THE CHAIRMAN: Delegate Moser, would you yield
12 to a question?

13 The Chair will recognize Delegate Hutchinson
14 to put the question.

15 DELEGATE MOSER: I yield, sir.

16 DELEGATE HUTCHINSON: As I see it, what we are
17 doing, what your committee has done is forbid the General
18 Assembly to change boundary lines without approval of the
19 people of the counties affected.

20 On the other hand, what we have also done is
21 we have allowed the General Assembly to change the form

1 of the government of the county in that the regional
2 government could in all probability supersede county
3 government in power. Is that not correct?

4 THE CHAIRMAN: Delegate Moser.

5 DELEGATE MOSER: I would say no, that it is
6 not what is intended.

7 THE CHAIRMAN: Delegate Hutchinson.

8 DELEGATE HUTCHINSON: Could you explain that
9 because as I see it you could form a regional government
10 that would have in some ways have some sort of powers
11 that would supersede the county governments?

12 THE CHAIRMAN: Delegate Moser.

13 DELEGATE MOSER: In what respect specifically?
14 Give me an example of exactly what you have in mind.

15 THE CHAIRMAN: Delegate Hutchinson.

16 DELEGATE HUTCHINSON: That is what I am asking
17 you because I have not made up my mind. I wonder if there
18 is any way possible the regional governments could super-
19 sede county governments.

20 THE CHAIRMAN: Delegate Moser.

21 DELEGATE MOSER: In answer to the question that

1 you asked, the last question which I can answer, the
2 answer is no, county governments have to remain intact.

3 With respect to transfer of powers or something
4 like that, the General Assembly could if it wanted to,
5 if it wanted to do so, could say, take operation of
6 transit, the transit facilities or something like that,
7 give it to a transit authority.

8 Of course, as I say, the General Assembly
9 could permit a referendum if they wanted to do this.

10 THE CHAIRMAN: If Delegate Moser will still
11 yield to a question, the Chair will recognize Delegate
12 Schloeder to put the question.

13 DELEGATE SCHLOEDER: Thank you. I asked this
14 question before I guess. I think you have too, Mr. Chair-
15 man. I am still troubled by the definition that Chairman
16 Moser gives of government. He talked in his earlier
17 speaking against the amendment that a three-man elected
18 commission, say a sanitary commission or transit com-
19 mission, would come under his definition of government.
20 It just seems we may be talking about two different
21 things.

1 I still would like if possible a little more
2 light. I am still confused about his definition of
3 government in this sense.

4 THE CHAIRMAN: Delegate Moser.

5 DELEGATE MOSER: Delegate Schloeder, I do not
6 know how else to define government than to say it is a
7 unit or body that performs a service function. It could
8 be very limited.

9 I know, this is really one of the problems with
10 this whole area, this of course is one of the reasons
11 why we permit rather than require a referendum in this
12 situation -- a government could be anything, anybody
13 performing a service function, be it ever so slight.

14 Really, the only thing I can think of offhand
15 you would be excluding in the word "government" would be
16 an election district or something like that, which does
17 not really perform a function.

18 THE CHAIRMAN: Delegate Schloeder.

19 DELEGATE SCHLOEDER: Then you could have a number
20 of governments. You could have a county government, a
21 transit government, a sanitary commission government,

1 conservation government. Are they all different? Are
2 they interrelated? Does one have authority over the others
3 or do they all have individual powers.

4 THE CHAIRMAN: Delegate Moser.

5 DELEGATE MOSER: That is the very point of it
6 all. We do not want the power of the General Assembly
7 in this area to provide for coordination to be limited
8 in any way, mandatory referendum would do that. You
9 might well wind up with governments all over the place
10 as you suggest.

11 THE CHAIRMAN: If Delegate Winslow will yield
12 to a question, the Chair will recognize Delegate Cardin
13 to put the question.

14 DELEGATE WINSLOW: I yield.

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: Delegate Winslow, in your
17 speaking against the amendment, I was under the impression
18 you felt it would be affecting the powers that was most
19 detrimental, that perhaps the law establishing the popu-
20 larly elected representative regional government could be,
21 I made this interpretation, could be subject to referendum

1 but you did not want the powers, every time there was a
2 change in powers, be brought to referendum. Is this a
3 correct interpretation?

4 THE CHAIRMAN: Delegate Winslow.

5 DELEGATE WINSLOW: I did not speak to the
6 question which my colleague suggests. I only pointed out
7 that as the amendment was worded it would have the effect
8 of putting to referendum every change in powers, however
9 slight. That seems to me to be highly undesirable and
10 for all practical purposes impossible. I did not speak to
11 the other part of the question but I am glad to do so.
12 I would leave the committee report as it is.

13 THE CHAIRMAN: Any other delegate desire to
14 speak in favor?

15 Delegate Cardin.

16 DELEGATE CARDIN: In continuing that particular
17 line I am confused as to who would bring to referendum,
18 if there were any difficulties with this popularly elected
19 regional government, who would be empowered to bring this
20 to referendum? Would it come under the provision of
21 no more than 50 percent of the signatures may come from

1 any one county? If there are only two counties or a
2 municipality in the county involved, how would we effect
3 a referendum?

4 THE CHAIRMAN: Delegate Winslow.

5 DELEGATE WINSLOW: The referendum would be ef-
6 fected in exactly the same way under the present wording
7 of the provision as it would under the lady's proposed
8 amendment because her amendment makes no provision either
9 as to how it should be effected.

10 The committee report shows that the effectuation
11 of the referendum today would be left in the hands of
12 the General Assembly. They could provide any kind of
13 petition they pleased in both cases, whether this should
14 read "may" or "shall".

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: One last question. Could the
17 word "may" preclude any referendum?

18 THE CHAIRMAN: Delegate Winslow.

19 DELEGATE WINSLOW: Not that I can see.

20 THE CHAIRMAN: Any further debate in favor of
21 the amendment?

1 Delegate Carson.

2 DELEGATE CARSON: Mr. Chairman, you may call
3 me out of order because it is not strictly in favor, nor
4 is it strictly against, but I would like to point out
5 that in our deliberation in the Local Government Committee
6 we did decide that a regional government could preempt
7 entirely a county government's function although it would
8 not necessarily have to. A regional government may
9 exercise all the powers of the former counties involved
10 whose boundaries lie within it. County lines would
11 still exist but powers could be given by the General
12 Assembly to that regional government.

13 On the other hand, powers would not have to be
14 given so broadly and it would certainly be consistent
15 also with the existence of county governments that a
16 limited regional government be established. Let's make
17 no bones about it. If you vote for this you are voting
18 to permit the General Assembly to permit an all-powerful
19 regional government. I do not say vote against it.
20 I merely say understand that when you do vote for it,
21 if you do.

1 THE CHAIRMAN: The question arises on adoption
2 of Amendment No. 1. Are you ready for the question? A
3 vote Aye is a vote in favor of the adoption of Amendment
4 No. 1. A vote No is a vote against. Cast your votes.

5 (Whereupon, a roll call vote was taken.)

6 Has every delegate voted?

7 Does any delegate desire to change his vote?

8 The clerk will record the vote. There being
9 20 votes in the affirmative and 90 in the negative, the
10 motion fails. The amendment is rejected.

11 Are there any other amendments to Section 7.10?

12 Delegate Case.

13 DELEGATE CASE: Mr. Chairman, I have an amend-
14 ment in the process of preparation striking at the same
15 point we have been discussing here.

16 THE CHAIRMAN: Are there any other amendments
17 to either Section 7.10 or 7.02?

18 Delegate Sybert.

19 DELEGATE SYBERT: I also am having an amendment
20 drafted to 7.10.

21 THE CHAIRMAN: Are there any amendments to either

1 7.02 or 7.10 which are already printed?

2 Delegate Winslow.

3 DELEGATE WINSLOW: I have an amendment which has
4 been prepared to 7.02 labeled E.

5 THE CHAIRMAN: I have the amendment. The clerk
6 will read the amendment. This will be Amendment No. 2.

7 MR. QUILLEN: Amendment No. 2 to Committee
8 Recommendation No. LG-1 by Delegate Winslow:

9 On page 2, Section 7.02 Establishment of Coun-
10 ties line 17 following the word "shall" strike out all
11 the rest of the sentence on lines 17 through 20 and in-
12 sert in lieu thereof the following:

13 "be enacted except by the affirmative vote of
14 at least three-fifths of all members of each House."

15 (Whereupon, the amendment was seconded.)

16 THE CHAIRMAN: The Chair recognizes Delegate
17 Winslow to speak to the amendment.

18 DELEGATE WINSLOW: This is an amendment intended
19 only to give a chance to the members of this committee
20 to consider an alternative to the provision of the
21 committee report. The committee report in 7.02 mandates a

1 referendum in every case where the boundaries of the
2 counties, establishment, merger, dissolution of counties
3 takes place.

4 There is a possible alternative way of making
5 these changes. My only purpose in presenting it is in
6 order that this alternative may be considered and voted
7 down or voted up. The effect of the proposed amendment
8 would be that starting on line 17 we would strike those
9 words which appear in line 17 following the word "shall"
10 and insert instead the words "be enacted except by the
11 affirmative vote of at least three-fifths of all members
12 of each House", which is to say, three-fifths of the
13 members of each House could make changes with respect
14 to counties, their establishment, their merger, disso-
15 lution, alteration of boundaries, if the General Assembly
16 by three-fifths vote of each House should so decide.

17 That is substituted in my amendment for the
18 mandated referendum which is there provided.

19 THE CHAIRMAN: Does any delegate desire to speak
20 in opposition?

21 Delegate Moser.

1 DELEGATE MOSER: Would Delegate Winslow -- I
2 ask this with the indulgence of the Chair -- yield just
3 for one question at this point.

4 THE CHAIRMAN: Delegate Winslow.

5 DELEGATE MOSER: Would Delegate Winslow with-
6 draw his amendment until other amendments with respect
7 to 7.10 and 7.02 have been considere? I think it may
8 save a considerable amount of time if this is done.

9 THE CHAIRMAN: You mean other amendments referred
10 to by Delegate Case and Delegate Sybert?

11 DELEGATE MOSER: Yes, sir. I would suggest
12 also it might be well, since the hour of six has come,
13 we might save some time if we take a look at those two.

14 THE CHAIRMAN: Delegate Winslow, will you with-
15 draw your amendment for a moment?

16 DELEGATE WINSLOW: Be glad to.

17 THE CHAIRMAN: Amendment No. 2 is withdrawn for
18 the moment in view of the hour. The Chair recognizes
19 Delegate Powers.

20 DELEGATE POWERS: Mr. Chairman, I move the
21 Committee of the Whole rise and report to the Convention

1 that it has not concluded its consideration of Committee
2 Recommendation No. LG-1.

3 THE CHAIRMAN: Is there a second?

4 (Whereupon, the motion was seconded.)

5 THE CHAIRMAN: All in favor signify by saying
6 Aye, contrary No. The Ayes have it. It is so ordered.

7 (The mace was replaced by the Sergeant at Arms.)

8 (Whereupon, at 6:08 p.m., the Committee of the
9 Whole rose, and the Convention reconvened.)

10 THE PRESIDENT: The Convention will please come
11 to order.

12 On behalf of the Committee of the Whole, the
13 Chair reports the Committee of the Whole still has under
14 consideration Committee Recommendation No. LG-1 and de-
15 sires to sit again.

16 The Chair has several announcements to make.
17 one of very great importance. I think all of us have been
18 so concentrating on the reports that have been coming in
19 very rapidly in recent days that some of the committee
20 chairmen have been overlooking the fact that under Rule
21 28-A, Friday is the day. No more committee recommendations,

1 no final committee recommendations may be received after
2 Friday except by the affirmative vote of the majority of
3 the delegates.

4 Inasmuch as the rules require that the committee
5 memorandum be filed with the committee recommendation,
6 this means that the Committee on the Legislative Branch,
7 the Committee on General Provisions, the Committee on
8 Personal Rights and Preamble, and the Committee on Suffrage
9 and Elections must each file in your supplemental or in
10 the case of one committee its original report.

11 I realize all of you are tired, I know we have
12 been maintaining a very, very stringent pace in the past
13 week. But we must do this. I therefore ask each of
14 those committee chairmen and the staff to work at night,
15 do everything possible so that the committee reports,
16 remaining committee recommendations come in not Friday
17 but before Friday.

18 I am glad to announce also arrangements have
19 been made to place phones in the lounge which are avail-
20 able for delegates for outgoing calls only. The phones
21 cannot be used to receive incoming calls and please,

1 therefore, do not give the number to anyone because it
2 simply will mean you will not receive the call. The
3 operator will not put incoming calls through to these
4 phones. If you have an emergency and it is imperative
5 that you receive a message while in the House, you are
6 free to have a message sent to you in care of either my
7 office or the secretary's office. They will see it is
8 brought to you instantly.

9 Are there any announcements by committee chair-
10 men?

11 Delegate Kiefer.

12 DELEGATE KIEFER: Mr. President, the Committee
13 on Personal Rights and Preamble will meet tomorrow night
14 at eight o'clock to finish up a few odds and ends.

15 THE PRESIDENT: Any other announcements by com-
16 mittee chairmen?

17 Delegate Penniman.

18 DELEGATE PENNIMAN: Mr. President, the Committee
19 on Style will meet this evening an hour and a half after
20 the close of this session, 7:45.

21 THE PRESIDENT: Any other?

1 Delegate Moser.

2 DELEGATE MOSER: Mr. Chairman, the Local
3 Government Committee will meet briefly immediately after
4 this session.

5 THE PRESIDENT: Delegate Gallagher.

6 DELEGATE GALLAGHER: Mr. Chairman, the Committee
7 on the Legislative Branch will meet tomorrow evening at
8 7:45.

9 THE PRESIDENT: Delegate Dulany.

10 DELEGATE DULANY: Mr. President, the Committee
11 on Public Information will meet tomorrow at 12:30 promptly.

12 THE PRESIDENT: Any other?

13 Before I recognize those who are presently
14 standing, let me recognize Delegate Morgan, Chairman of
15 the Committee on the Executive Branch.

16 DELEGATE MORGAN: The Committee on the Executive
17 Branch will meet tomorrow morning at 9:00 a.m.

18 THE PRESIDENT: Any other announcements by
19 committee chairmen?

20 Will all delegates present now who were not
21 present at roll call at the beginning of the session this

1 afternoon please indicate their presence on the electronic
2 board.

3 Delegate Taylor.

4 DELEGATE H. TAYLOR: Mr. President, I rise to
5 a point of personal privilege. None of us would sleep
6 very well if one of us did not do this.

7 One is to welcome you back from Milwaukee;
8 secondly, to tell you we missed you very much; thirdly,
9 to thank you for what we have learned from the report that
10 comes out of Milwaukee.

11 In the Morning Sun today there is an article
12 in which it says that at this Convention which was spon-
13 sored by the National Municipal League, it was a Seminar
14 on Constitutional Conventions chaired by former Governor
15 Scranton of Pennsylvania, that Maryland was the last great
16 hope for constitutional reform, that everybody is watching
17 Annapolis, that Mr. Eney's leadership has started the
18 Convention on the right track. There is the aura about
19 Mr. Eney that he is above politics. That the National
20 Municipal League halo should be awarded to Mr. Eney.

21 (Laughter.)

1 THE PRESIDENT: If the Chair would be permitted
2 a matter of personal privilege, it would be to ask that
3 you cease and desist.

4 (Laughter.)

5 DELEGATE H. TAYLOR: Just a few seconds more.
6 Accolade after accolade was poured upon our
7 President. It said Mr. Eney sat stoically through the
8 rhapsody but as Mr. Wheeler continued the Maryland Con-
9 vention President's face grew cherry red.

10 (Laughter.)

11 We who are exposed to his firmness, his fairness
12 and his patience I know when this Convention adjourns
13 sine die will carry with us a great respect for this man
14 and be ever grateful for the opportunity to have served
15 under his leadership.

16 (Applause.)

17 THE PRESIDENT: Thank you. It is very diffi-
18 cult for anyone to reply to that. I can say only one
19 thing. The Chair cannot accomplish a thing without the
20 cooperation of every delegate. I have had that cooperation.
21 It is the only reason we can do anything. I thank you for

1 it.

2 Are there any other announcements by delegates?

3 Delegate Kirkland.

4 DELEGATE KIRKLAND: Mr. Chairman, I do not
5 think we should go by today without wishing Delegate Sam
6 Jett happy birthday on his 66th.

7 (Applause.)

8 THE PRESIDENT: Delegate Macdonald.

9 DELEGATE MACDONALD: Parliamentary inquiry, Mr.
10 President.

11 You referred to Friday as the deadline under
12 Rule 28-A. Will that apply to reports on interim provi-
13 sions? Just how are we going to handle interim provisions?

14 THE PRESIDENT: No, it refers only to final
15 reports of committees with respect to their recommendations.
16 It will not apply to the report of the -- by interim
17 provisions I assume you mean report as to the schedule of
18 legislation and schedule of transitory provisions.

19 DELEGATE MACDONALD: Yes.

20 THE PRESIDENT: It cannot possibly be completed
21 until much later.

1 Are there any other announcements?

2 The Chair recognizes Delegate Powers.

3 DELEGATE POWERS: Mr. President, I move we
4 adjourn until ten o'clock tomorrow morning.

5 THE PRESIDENT: Is there a second?

6 (Whereupon, the motion was seconded.)

7 THE PRESIDENT: All in favor signify by saying
8 Aye, contrary No. The Ayes have it and it is so ordered.

9 (Whereupon, at 6:15 p.m. the Convention ad-
10 journed, to reconvene at 10:00 a.m., Wednesday,
11 November 15, 1967.)

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1 THE CHAIRMAN: State the privilege.

2 DELEGATE WHITE: Advise the Convention we have
3 with us in the gallery to the rear of the podium two dis-
4 tinguished Maryland citizens, Milton Holmes, first vice
5 president of the Baltimore branch of the National Alliance
6 of Postal and Federal Employees, who is also Director
7 of our Target City Youth Program in Baltimore, and one of
8 his assistants, Mr. Pullen.

9 THE CHAIRMAN: Delighted to have them with us.
10 (Applause.)

11 THE CHAIRMAN: Delegate Kirkland.

12 DELEGATE KIRKLAND: Delegate Moser, this qu es-
13 tion pertains to charter amendments. The power of charter
14 amendment is considered basic power of any home rule
15 government. According to the committee's commentary,
16 this power is considered implied as being an existing
17 power of municipalities. Most municipal charters, how-
18 ever, do not cover the power of charter amendments. This
19 right is guaranteed in the present Constitution under a
20 1954 home rule amendment.

21 My question, Mr. Moser, or Delegate Moser is,

1 if you consider this power implied, then why not spell
2 it out in this article like much of the rest is spelled
3 out.

4 DELEGATE MOSER: The answer, Delegate Kirkland,
5 is it is not implied. This is explicit. Provided in
6 7.07, relates to existing powers.

7 I said three times now I think in answer to a
8 series of questions, I do not really know how we can make
9 it any clearer, that what is intended here is to continue
10 all existing powers for municipal corporations, including
11 the power to amend the charter, but, this is the only
12 but, if General Assembly wants to change the law they
13 can change the law. That is all.

14 Within that framework this is what it means.
15 They retain subject to control of the General Assembly the
16 power to amend their charters whether or not their
17 charters now give them the right to do that. I specify
18 Section 3 of Article 11(e) of the present Constitution
19 which it is intended will be continued. That specifically
20 gives the power to municipalities to amend charters.

21 THE CHAIRMAN: Delegate Sickles.

1 DELEGATE SICKLES: Delegate Moser, with respect
2 to Section 7.03, which concerns itself with structure of
3 government, do I understand this section correctly when
4 I conclude that as a matter of establishing procedures
5 for the operation of the county government, the state
6 can only do it one time through the authority the General
7 Assembly would have to provide an instrument of government
8 effective July 1, 1972?

9 That would of course also apply to those counties
10 who have not adopted an instrument of government by that
11 time and even that one could be amended thereafter under
12 procedures established in 7.04.

13 My conclusion as I read this, I would hope you
14 would show me otherwise if I am wrong, that as a matter
15 of fact then the state would be forever precluded from
16 establishing standards that have to do with the structure
17 and administration of the county government rather than
18 the powers it might have.

19 DELEGATE MOSER: Let me answer the last question
20 first. The answer to the last suggestion is no, that
21 the state can always act by general law to affect all

1 counties if they want to. This would mean anything that
2 you can imagine the General Assembly would want to do
3 so long as they acted by general law. That is point one.

4 The answer is no to the last question.

5 The first, I think, Delegate Sickles, that I am
6 not just making myself clear about it, there are several
7 things that the General Assembly is to do. As I said
8 in answer on someone's question earlier, within one year
9 following the adoption of this Constitution, the General
10 Assembly shall provide by public general law a choice of
11 procedures by which an instrument of government of a
12 county may be proposed.

13 This means procedures and they can put such
14 limits as they want on it. This is a choice. This is
15 what the counties themselves then pick up in selecting
16 their charters. There is an entirely different thing in
17 the next sentence.

18 It is in the sentence after next. The General
19 Assembly shall provide by law an instrument of government
20 which shall become effective on July 1, 1972 for those
21 counties which have not previously adopted an instrument

1 of government as provided in this section.

2 That is something different. That means one
3 instrument which automatically becomes effective for a
4 county that just not happen to have completed the pro-
5 cedures.

6 THE CHAIRMAN: Delegate Sickles.

7 DELEGATE SICKLES: May I give an example and
8 ask you to answer this example and then I will be satis-
9 fied that I understand it.

10 Would it be proper five or ten years from now
11 for the General Assembly by general statewide law to
12 establish a principle that every county must give 30 days'
13 public notice before it adopts its budget and then only
14 have a public hearing?

15 DELEGATE MOSER: Yes.

16 THE CHAIRMAN: Any other questions?

17 Delegate Scanlan.

18 DELEGATE SCANLAN: I have a question with
19 reference to Section 7.07.

20 THE CHAIRMAN: Delegate Scanlan.

21 DELEGATE SCANLAN: in the last line of that section

1 dealing with the way municipal charters may be withdrawn,
2 you permit it to be done with the concept of govern-
3 ing body and municipal corporation affected and you say,
4 or except that the General Assembly may provide by public
5 law. Two questions.

6 Do I understand correctly that under present
7 law since municipal corporations are chartered by the
8 General Assembly an individual charter could be withdrawn
9 by a special law of the General Assembly; secondly, under
10 your provision this could only be done by a general public
11 law? If that is true in this respect, your committee
12 recommends greater protection to municipalities having
13 their charter withdrawn by an act of the General Assembly
14 than they enjoy under the present Constitution.

15 DELEGATE MOSER: I was looking for the provision
16 of the present Constitution. I think it is the same be-
17 cause I believe that it is pretty clear under 11 (c). I
18 would like to check it if I may to be completely correct,
19 that the General Assembly can only act with respect to
20 existing municipalities by public general law, it is
21 defined differently but basically it is that under the

1 existing Constitution and that is what we provide here.

2 Let me check to make sure that this is com-
3 pletely correct. It appears to be. I have the provision
4 of the existing Constitution here. I do not believe that
5 under it either could the General Assembly repeal a
6 charter.

7 THE CHAIRMAN: Delegate Raley.

8 DELEGATE RALEY: Mr. Chairman, Chairman Moser,
9 going back to 7.03, there is some misunderstanding at least
10 with me on this choice of procedures. It says General
11 Assembly shall provide by public general law choice of
12 procedures. As I understand choice of procedures, it
13 is not type of government they are going to have but
14 how they are going to get that type of government. That
15 is, are they going to do it by study committee, are they
16 going to do it by the commissioners setting it up?
17 Once they, the General Assembly has established choice of
18 procedures, then the procedures they have established
19 will be followed and an instrument of government will be
20 created. Than after it is created it will be submitted
21 to the people for a referendum. If they approve it, it

1 is the government in effect. If nothing is done, then
2 and then only will the General Assembly set up the govern-
3 ment for the local subdivision.

4 Am I correct? Is that correct?

5 DELEGATE MOSER: Yes, virtually everything you
6 have said. I am checking. I think you put too limited
7 a construction on the word "procedures". I think pro-
8 cedures could be more than you limit it.

9 THE CHAIRMAN: Delegate Raley.

10 DELEGATE RALEY: Mr. Chairman, Chairman Moser,
11 I followed the draft sentence structure of county govern-
12 ments in which they said within one year following adop-
13 tion of the Constitution the General Assembly shall
14 provide by law alternate procedures by which an instrument
15 of government of a county may be proposed. Then they
16 go on to list procedures. I was following that as the
17 procedures. I just did not want any misunderstanding.

18 DELEGATE MOSER: I have to answer that specifi-
19 cally with respect to the committee's intention. I think
20 the committee's intention was precisely as you stated it.
21 If I have indicated something to the contrary in answer

1 to Delegate Sickles' question, I stand corrected in that
2 regard.

3 It is really a sentence, as you point out,
4 specifying those procedures because the committee as I
5 recall it, this was an early action of the committee, did
6 not regard these as absolutely essential.

7 THE CHAIRMAN: Delegate Moser, did I understand
8 from your earlier answer you are saying that in addition
9 to procedures as outlined by Delegate Raley, procedures
10 could include alternate forms of charter?

11 DELEGATE MOSER: Well, this was my understand-
12 ing when I first answered the question. But I think that
13 what it means, and it is limited really by committee
14 construction, what they did is what the draft provides,
15 as Delegate Raley stated.

16 THE CHAIRMAN: Delegate Mentzer.

17 DELEGATE MENTZER: My question is on 7.11. I
18 wondered why you were giving to intergovernmental authori-
19 ties the powers to collect these service and benefit
20 charges. I wonder if you give powers to borrow money how
21 you control this.

1 DELEGATE MOSER: Exactly as they are controlled
2 now. Those basically are the powers they have now and
3 they are controlled by law either of the General Assembly,
4 the General Assembly I suppose.

5 THE CHAIRMAN: Delegate Mentzer.

6 DELEGATE MENTZER: In the case of WSSC, it has
7 its benefits, Suburban Sanitary Commission, it has benefit
8 charges but they are collected by the county, you are not
9 setting up any separate collection agency. I see this
10 as giving some sort of constitutional collection agency
11 to these intergovernmental authorities and their bonds
12 also are approved by the County Commissioners and by
13 General Assembly, and I do not see where this carries
14 through under this wording.

15 DELEGATE MOSER: That is the way they operate,
16 but Maryland Port Authority operates in a different way.
17 This is not intended, if this is your question, to change
18 the procedure that is utilized with the Sanitary Com-
19 mission. That is, still the same thing would follow there.
20 But it is simply to permit what is now permitted. It
21 is not intended as a change from existing law.

1 THE CHAIRMAN: Delegate Hostetter.

2 DELEGATE HOSTETTER: Chairman Moser, I refer
3 to the second sentence in Section 7.06, line 40 on page
4 3 of the Committee Recommendation. In granting the exer-
5 cise of a power or performance of a function for one
6 county that may be denied to another county or counties,
7 would the act of the legislature setting forth this
8 grant be subject to referendum?

9 DELEGATE MOSER: It would be subject, as I
10 understand it, to a statewide referendum. Under what
11 has been before us in the Committee of the Whole up to
12 now, it would not be subject to a local referendum as a
13 law of the General Assembly locally referred as provided
14 by what is it, Article 13 of the present Constitution,
15 whatever it happens to be. I hope I am not saying here
16 we go again, but let me continue with it.

17 It is an enabling law. It is not an affirma-
18 tive act. It is not therefore effective in doing any-
19 thing that is this local option arrangement, not effec-
20 tive in doing anything until the county acts. When the
21 county acts its charter would provide for local referendum

1 at that point, all county charters do at this point.
2 They vary a little bit. Some things just like with state
3 laws cannot be referred but for the most part I under-
4 stand they do provide for referendum, that is the point
5 you provide for local referendum.

6 THE CHAIRMAN: Delegate Chabot.

7 DELEGATE CHABOT: I would like to continue on
8 this same point as you indicated before, most local
9 charters do not permit tax measures to be referred. If
10 you permitted an individual county to have a particular
11 taxing power, then the exercise of that power by the
12 county would probably not be the occasion to refer it
13 to, to petition the county's action to referendum.

14 Therefore, the only time when such a bill could
15 be petitioned would be the time when the General Assembly
16 acted to grant the authority. Would you feel that that
17 act by the General Assembly should be referred only as
18 a statewide bill would be referred?

19 DELEGATE MOSER: What do you provide in the
20 present referendum provision for the state? You provide
21 state tax laws are subject to be referred.

1 THE CHAIRMAN: Delegate Chabot.

2 DELEGATE CHABOT: No, but that is an exercise
3 of the taxing power, not a question of a grant to the
4 authority.

5 DELEGATE MOSER: I fail to see why you would
6 impose a referendum on the enactment of a local tax,
7 if I understand your question correctly, whereas you
8 prohibit a referendum in case of a state tax.

9 Put it more directly. I think what you were
10 leading toward is a suggestion that possibly the enable-
11 ment should be subject to local referendum. Possibly so.
12 The point of the thing is that if people in a county
13 want their tax laws to be referred then they will provide
14 for that. Strictly a matter it seems to me for them
15 to take care of in their own charters. I say it seems
16 to me, it seems to the committee too, which specifically
17 considered this after a meeting with a subcommittee of
18 your committee, as you know.

19 THE CHAIRMAN: Delegate Raley.

20 DELEGATE RALEY. On Section 7.11 there have
21 been questions that might leave some confusion. I

1 think we ought to remember that what the Finance Committee
2 is going to recommend so we can get this, maybe I can
3 ask a question about it to get clarified in my mind and
4 the minds of others.

5 First they are going to say taxes can only be
6 imposed by the elected representatives of the people
7 exercising legislative powers.

8 My question to you, Mr. Chairman, is this: that
9 all this says in 7.11 is that only elected representatives
10 can put a tax into effect. It does allow those elected
11 representatives on any type of governmental authority to
12 collect taxes or administer it and so forth. Is that not
13 correct? Is that not all that simply says?

14 DELEGATE MOSER: Yes, it makes clear though I
15 think something that is maybe clear in the case law but
16 is not so clear in the Constitution. That is that these
17 bodies can also impose benefit charges and service
18 charges.

19 THE CHAIRMAN: Any other questions?

20 MR. MOSER: The answer is, it is not intended
21 to run afoul in any way of the provision, with which I am

1 familiar, which you cited that Finance and Taxation is
2 coming out with.

3 THE CHAIRMAN: Delegate Weidemeyer.

4 DELEGATE WEIDEMEYER: Mr. Chairman, do you have
5 in this recommendation any clear-cut grant of authority
6 for referendum to the local subdivision or any clear-
7 cut provision mandating the legislature to set forth
8 referendum provision for each local subdivision.

9 DELEGATE MOSER: I understand the last part of
10 the question, that is, do we, if I can restate it, do we
11 say to the legislature set forth referenda that will
12 be required to be adopted by the counties; is that correct?

13 DELEGATE WEIDEMEYER: That is right.

14 DELEGATE MOSER: The answer to that question
15 is no. We do not. The reason, I point this out to
16 you we do not, is that there is no present provision in
17 the Constitution. All the words in there with respect
18 to home rule, 11 (a) and 11 (c), where charters are
19 involved, there is no requirement of that there.

20 THE CHAIRMAN: Delegate Weidemeyer.

21 DELEGATE WEIDEMEYER. There in that instance

1 there was no grant in Article 11 (a) for a charter gov-
2 ernment, but Baltimore County and Anne Arundel and I
3 assume Montgomery County adopted it in their charter and
4 there has always been a doubt as to whether or not this
5 was correct.

6 DELEGATE MOSER: I see your point. The answer
7 categorically is that it is clear that a county may adopt
8 in its charter a referendum procedure. It is absolutely
9 clear they can.

10 I think it is also clear that the legislature
11 could pass a law requiring all counties to have a referen-
12 dum procedure. If it affected all counties, it could
13 require the same procedure in all counties too.

14 THE CHAIRMAN: Delegate Weidemeyer.

15 DELEGATE WEIDEMEYER: With such a provision
16 is it possible they could likewise withhold the right of
17 referendum to the newly formed counties whereas, under
18 expressed provisions of your recommendation, they might
19 not be able to do it as the counties and municipalities
20 already in existence?

21 DELEGATE MOSER: I do not follow that question.

1 DELEGATE WEIDEMEYER: The question is, is it
2 possible under the draft here for the legislature to
3 withhold from these newly organized subdivisions the
4 right of referendum and prohibit them from having referen-
5 dum on local legislation?

6 DELEGATE MOSER: It is possible that -- the
7 answer is yes on local legislation. The answer, if you
8 encompass within that change of structure of county
9 government, 7.04 would prohibit it. There must be
10 permitted referendum and initiative proceedings there to
11 amend the charter.

12 I suppose if the legislature in its wisdom were
13 to say no counties may have referenda of any kind or
14 local ordinances, then this would be a valid law.

15 THE CHAIRMAN: Delegate Marion.

16 DELEGATE MOSER: They could do it under present
17 law, I believe, just that.

18 THE CHAIRMAN: Delegate Marion.

19 DELEGATE MARION: Delegate Moser, I rise with
20 some hesitation because you have been under the gun a
21 long time. I think you have been doing an admirable

1 job.

2 I would like to come back to just see if I can
3 understand a little better than I think I do now one
4 of the questions I asked you earlier in 7.05, the third
5 alternative, and the use of the word "denied" in line 19.
6 The word "denied" seems to me to be a more stringent word
7 than as I understand the committee's commentary on this
8 section would place upon it in your previous answers
9 referring to the preemption of a particular field.

10 Do you think that we are going to be reduced
11 in dealing with this on a subject by subject situation
12 in the General Assembly to having the General Assembly
13 say either that in acting in a particular field it is
14 preempting the field, or it is thereby denying counties
15 the power to act in that field, or that it will have to
16 say on the other hand that it is acting in this particular
17 field but the counties may continue to enact such further
18 laws in that area which are not inconsistent with the
19 action of the public general law of the General Assembly?

20 DELEGATE MOSER: The answer to what I think
21 your question is is no. Denied is intended to cover the

1 area. That is, a specific denial or a preemption. I
2 cannot go further than that. The intention of the com-
3 mittee is not, is not, to require the General Assembly
4 each time they preempt the field to say no county can
5 enact a law on this subject matter. There would be denial
6 by preemption which would be by implication. I think you
7 have the right now, do you not?

8 THE CHAIRMAN: Delegate Marion.

9 DELEGATE MARION: At a hearing which was held
10 by your committee and the Committee on Legislative
11 Branch one evening several weeks ago, I heard Delegate
12 Fox, member of your committee, use this example, the
13 example of acting in the area of regulation of sale of
14 liquor. For example: Suppose the General Assembly were
15 to enact a law which said no liquor could be sold on
16 Sundays, no liquor could be sold to persons under 21
17 years of age. That was the extent of the law. Would that
18 be preempting the field so the counties could not act
19 further than that and regulate beyond that point not
20 inconsistent with that so that county might then say
21 if it wished, new sales of liquor can be made between

1 midnight and 8:00 a.m. in our county?

2 DELEGATE MOSER: I would think that would not
3 preempt the field. That is to say, the county would be
4 permitted to operate, in that narrow set of facts. Be-
5 cause that is not inconsistent, is it?

6 THE CHAIRMAN: Delegate Marion.

7 DELEGATE MARION: Then you are saying, as I
8 understand it, that the county might act in a field in
9 which the General Assembly has acted so long as it is not
10 inconsistent with the act of the General Assembly?

11 DELEGATE MOSER: That would be correct.

12 THE CHAIRMAN: Are there any further questions?
13 Delegate Mitchell.

14 DELEGATE MITCHELL: Mr. President and Delegate
15 Moser, I think there is the fear of the violation of the
16 political integrity of the already established counties
17 and municipal units such as Baltimore City.

18 What I would like to ask you to do is to give
19 an illustration, for example, using Baltimore City and
20 Baltimore County and Anne Arundel County as to what
21 this article, Section 7.10, multicounty governments,

1 contemplates as far as, and the extent of the alteration of
2 boundaries as this Article provides with regard to these
3 three counties using them as an example.

4 DELEGATE MOSER: Well --

5 DELEGATE MITCHELL: We all recognize the needs
6 of multicounty cooperation, but sometimes we think that
7 it is enough and the fear is the fear of violating the
8 political powers in the already existing political enti-
9 ties.

10 THE CHAIRMAN: Delegate Moser.

11 DELEGATE MOSER: With that addition, I am not
12 sure I fully understand the question but let me answer it
13 if I may by example, and show you what could and could
14 not be done.

15 Under present law, the way it is set up in
16 the Constitution, for instance, it is fairly clear I
17 think that if the voters in the areas surrounding Bethle-
18 hem Steel Company wanted to be annexed to Baltimore
19 City, probably this could be done. That is to say, it
20 would not take a referendum in Baltimore County, the
21 whole county making a determination that they really do

1 not want these people to go to Baltimore City to become
2 annexed to Baltimore City even though they want to.

3 What 7.02 does, it would change this picture.
4 You cannot change boundary lines, you cannot merge
5 counties, you cannot alter the boundaries in any other
6 way, you cannot dissolve a county and specifically you
7 cannot annex Bethlehem Steel Company to Baltimore City
8 even though voters in the Baltimore area want to unless
9 voters in Baltimore County, voting as a county, agreed
10 to it and voters in the city would also agree. That is
11 the only way that could be done. That is one element.
12 That is 7.02.

13 You could not do any thing else to dissolve
14 a county. 7.10 is a different thing. It allows the
15 General Assembly to do pretty much what it can do now
16 except one thing. The General Assembly, it is doubtful
17 whether the General Assembly if it established a popularly
18 elected representative regional government, whether it
19 could submit it to referendum in the area that is affected.
20
21

1 In other words, to give an example, if they said
2 in Montgomery County and Prince Georges County there
3 would be a regional government of some kind there let's
4 assume that it was multi-functional regional government,
5 sewer, water, transit, everything. There is some question
6 under the present law as to whether the General Assembly could
7 refer that kind of thing, even if they wanted to, to a
8 county-by-county or some other kind of referendum.
9 I think 7.10 makes clear they could now.

10 Similarly I think the General Assembly has the
11 choice in this respect, because you might have simply the
12 creation of a popularly elected transit authority for the
13 two counties I just mentioned; or take the Baltimore MTA,
14 with which you are familiar, and you might say its Board
15 will be three people who are elected.

16 It would seem to me the General Assembly in a
17 case like that shouldn't be forced to submit it to referen-
18 dum in the area affected.

19 With these homey examples, it might be a little
20 clearer, because I know it was a little confused when we
21 started on this.

1 Does it answer your question?

2 THE CHAIRMAN: Delegate Mitchell.

3 DELEGATE MITCHELL: For example, does this
4 article contemplate the erasing of the boundary lines of
5 Baltimore City and the merging of it with Anne Arundel
6 and Baltimore County if the voters so decide?

7 DELEGATE MOSER: I suppose anything is possible.
8 You have to go through a number of things to get there.
9 You have to have a law of the General Assembly, subject to
10 statewide referendum; then a county-by-county referendum.
11 It is not much different from the situation that exists now,
12 in fact, except it is more stringent.

13 THE CHAIRMAN: Delegate Mitchell.

14 DELEGATE MITCHELL: In other words, Baltimore
15 City can keep its political entity with its elected offi-
16 cials?

17 DELEGATE MOSER: Yes.

18 DELEGATE MITCHELL: And Anne Arundel County can
19 keep its, Baltimore County can keep its, and they all vote
20 for a regional government to take care of certain tri-county
21 functions as you have suggested, water, sewage and the like?

1 Is that it?

2 DELEGATE MOSER: I suppose this would be an
3 accurate summary, yes.

4 THE CHAIRMAN: Delegate James.

5 DELEGATE JAMES: Mr. Chairman, I would like
6 to direct a question to Delegate Moser.

7 Directing your attention to section 7.07,
8 would it be a correct interpretation to say that with re-
9 ference to expansion of municipal boundaries, that all
10 of the present requirements, consent of the people being
11 taken in, consent of the people within the municipality,
12 would be required under the present provisions of Article
13 XXIII(a), plus the approval of the county fathers would be
14 necessary unless the legislature by general law provided
15 a different procedure?

16 Would that be correct?

17 DELEGATE MOSER: How far back does your "unless"
18 go? If your "unless" covers the entire question that you
19 asked, the answer is yes.

20 The point is, the General Assembly can
21 do whatever they want. They don't have to require.

1 THE CHAIRMAN: Delegate James.

2 DELEGATE JAMES: Let's assume the legislature
3 does not act, that the provisions of the Constitution are
4 applicable. Would this result in a rule that in expansion
5 of municipalities all present requirements appertain, plus
6 the formal approval of the county government?

7 DELEGATE MOSER: Yes, it would, if the General
8 Assembly didn't act; provided, again, that the schedule that
9 is adopted with the schedule of legislation contained
10 all those things in it. That schedule could very
11 well not have a provision for annexation laws we now have,
12 which I know you look upon with great disfavor, as do all of
13 us, or most of us, it could very well not have that in it.
14 It would then require the General Assembly, if any more
15 annexations were to occur, to supply the gap.

16 THE CHAIRMAN: Delegate James.

17 DELEGATE JAMES: One further question:

18 Suppose under this -- let me state it this way.
19 Even though the legislature acts under the provisions of
20 the Constitution, do you require the approval of the county
21 government in all instances before there can be expansion

1 of the municipal boundary?

2 DELEGATE MOSER: No.

3 DELEGATE JAMES: The legislative rule would be
4 paramount?

5 DELEGATE MOSER: Yes. The legislative rule
6 would be paramount. The idea is, the concepts we are
7 trying to get through, I think, that hopefully these matters
8 will be resolved by agreement on the local level, but the
9 General Assembly, if they aren't resolved on the local
10 level, can provide procedures for their resolution.

11 THE CHAIRMAN: Delegate Taylor.

12 DELEGATE L. TAYLOR: Mr. Chairman, I refer
13 to section 7.05. I am trying to understand the shared
14 powers approach. On page 22 of the Memorandum it is stated
15 in the last sentence, line 4, lines 3, 4 and 5, the need
16 to interpret express powers action will be eliminated by
17 use of shared powers.

18 I wondered if, say Baltimore County or any
19 County passed a minimum wage law or meat inspection law,
20 could both the county and the State operate in the same
21 field, within this same field of meat inspection,

1 police powers, or minimum wage?

2 THE CHAIRMAN: Delegate Moser.

3 DELEGATE MOSER: So long as they weren't in
4 conflict or so long as the General Assembly said the county
5 couldn't do it, yes, they could operate in the meat
6 inspection area. Most certainly they could operate in the
7 police power area, because this is very broad.

8 THE CHAIRMAN: Delegate Scanlan.

9 DELEGATE SCANLAN: I have either a parliamentary
10 inquiry or point of order, Mr. Chairman, if I may state it.

11 THE CHAIRMAN: State it.

12 DELEGATE SCANLAN: I for one have been tremen-
13 dously impressed by the patient, brilliant, and thoroughly
14 enlightened presentation of the Chairman of the Committee
15 on Local Government in explaining a very difficult, compre-
16 hensive report on one of the most difficult areas that this
17 Convention has to deal with.

18 He has now been at it for three hours. I
19 suggest even the mighty Homer nods.

20 I know it is difficult for the Committee of the
21 Whole to temporarily recess, but surely there must be some

1 way by a proper parliamentary device that Mr. Moser could
2 be given at least a 10 or 15 minute break.

3 THE CHAIRMAN: I would suggest the simplest
4 device would be to end the questions. (Laughter.)

5 He has probably pretty well covered the area.
6 If there are no further questions, we will let him at least
7 sit down.

8 Delegate Byrnes, do you have a question?

9 DELEGATE BYRNES: I do, sir.

10 Mr. Moser, is there any question, keeping in
11 mind lines 17 and 18 of 7.05, subsection (2), and lines
12 36 through 40 of section 7.06, is there any question
13 that the General Assembly might decide that they are
14 going to take from five counties, for example, the authority
15 to legislate in the area of, for example, sanitation, and
16 place that authority in itself as a governmental unit?

17 Put another way, to simply take from the five
18 counties certain governmental responsibility and place it
19 either in existing State agencies or perhaps create a
20 State agency to handle those problems?

21 MR. MOSER: You changed the question, I think,

1 in asking it.

2 DELEGATE BYRNES: The second.

3 DELEGATE MOSER: The answer is, and has to be,
4 I suppose this: that if they transfer a particular function
5 to another governmental unit, whatever it may be, if it is
6 a governmental unit, then they do have the power to do it.
7 This is the only way, for instance, that authorities can
8 operate. It would only be true if they passed it exclusively.
9 If they withdraw it and passed it exclusively to another
10 governmental unit, this would mean they have to say just
11 that, because ordinarily when these things are done, they
12 are not passed on exclusively.

13 THE CHAIRMAN: Delegate Byrnes.

14 DELEGATE BYRNES: What troubles me, of course,
15 is your definition of public general law, as much by its
16 terms --

17 DELEGATE MOSER: This is true. I think you
18 aptly point out a very necessary State power which is re-
19 tained in the General Assembly, which is to say they do
20 have the power to set up a multi-county authority. For
21 instance, what they have done, let's say for the Maryland
Port Authority, in effect, is to withdraw the power to

1 regulate the traffic in Baltimore Harbor from Anne Arundel
2 County, Baltimore County, and Baltimore City, and have
3 given it to the Maryland Port Authority. Without this pro-
4 vision they would not, without something like this --
5 they may not, I should say, have been able to do this.

6 THE CHAIRMAN: Delegate Byrnes.

7 DELEGATE BYRNES: One final question: Directing
8 your attention to 7.01 and this new beast called "civil
9 unit," as I understand it, incorporated municipality is
10 simply a limited purpose, small local government. As I
11 understand, civil unit is the same thing.

12 As I understand 7.08, both of them are
13 totally, the new municipality and new civil unit are totally
14 subservient to the county.

15 My question is the rationale and necessity of
16 a new type of local government, keeping in mind the fact
17 there is some reluctance on the part of many to add to this
18 proliferation of small local governments.

19 DELEGATE MOSER: I think the question you
20 ask points up something rather important. Your premise is
21 not correct.

1 The General Assembly can give additional powers
2 to new municipalities as well as to old. This means, for
3 instance, they can make darned sure if a municipality is
4 created by a county it will not be an odd beast, limited in
5 what it can do.

6 They could, for instance say, I believe,
7 a new municipality, if the county creates it, has to have
8 home rule. I would expect them to have the same procedures
9 for both. That is not true of a civil unit. A civil
10 unit, as we envision it, is something totally dominated
11 by the county, under the county, a creature of the county
12 entirely. What it is is a convenient way for the
13 county to provide a focal point where there is a population
14 concentration, give sewer and water in that area.

15 Some of the less developed counties are going
16 to need this kind of thing. It could also provide a forum,
17 if handled properly by the county, for them to express
18 themselves.

19 THE CHAIRMAN: Apparently there are more questions
20 I do not want to ask the Committee to rise and go through
21 the procedure of having a quorum call again.

1 In the absence of objection I will take it upon
2 myself to suggest that all questions abate for the next
3 five or ten minutes, until the quorum bell sounds in order
4 to give Mr. Moser an opportunity to sit and everybody else
5 an opportunity to stand.

6 Please do not go far away. It will be very
7 brief. We will simply sound the bell.

8 (Whereupon, a short recess was taken.)
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1 THE CHAIRMAN: Will the Committee please come to
2 order? Will the delegates please take their seats?
3 Delegate Carson, Do you have a question?

4 DELEGATE CARSON: Yes, I have two or three ques-
5 tions of Chairman Moser in relation to the municipal
6 corporations and civil units Section 7.07 to 7.09.
7 I think, however, they all relate solely to Section 7.07.

8 Chairman Moser, if I understand correctly, 7.07
9 deals with dissolution, merger, withdrawal of existing
10 powers of municipalities or boundary changes, is that
11 correct?

12 DELEGATE MOSER: Yes. Incidentally, I might
13 observe I guess a number of these questions will require
14 Yes or No answer, some not.

15 DELEGATE CARSON: If I can phrase them correctly,
16 they will. If I understand further, there are two ways in
17 which these various things can be accomplished. One is
18 by such law as the General Assembly shall provide, and
19 the other is by agreement of the municipalities or coun-
20 ties involved; is that correct?

21 DELEGATE MOSER: Yes, that's correct, but it is

1 subject to this proviso, that the General Assembly could
2 limit the agreement of the county and municipality in
3 7.08. That is if there were something the General Assem-
4 bly wasn't happy about, the two agreeing upon the General
5 Assembly could provide by general law something else.

6 THE CHAIRMAN: Delegate Carson.

7 DELEGATE CARSON: If I understand Mr. Moser, the
8 General Assembly by the laws that it provides may possibly
9 include a requirement for county consent but may also
10 possibly provide that no county consent at all would be
11 mandatory.

12 DELEGATE MOSER: Yes, I suppose that is a fair read
13 ing of this section. The intention, however, is to have
14 the General Assembly provide for county and municipal
15 corporation agreements at the first level.

16 THE CHAIRMAN: Delegate Carson.

17 DELEGATE CARSON: Chairman Moser, you say that,
18 but as the section is written I interpret it, I am going
19 to ask you if you interpret it the same way I interpret
20 it, to mean the General Assembly says, for example, that
21 Article XXIII(A) as now existing is to be reestablished

1 as law. Article XXIII in its totality could be law again.

2 DELEGATE MOSER: I think that's true.

3 DELEGATE CARSON: If that is so, then the area in
4 which the county and the municipality may accomplish these
5 things by agreement is limited to the area not preempted
6 by the General Assembly's law, is that correct?

7 DELEGATE MOSER: This would be true, but the pur-
8 pose of wording this as very carefully as it is worded,
9 I know you know this because you helped draft it, is to
10 encourage this business of getting rid of the problem at
11 the local level. We are very hopeful the General Assem-
12 bly will set up a procedure which will embody just
13 exactly that in the first instance and would only enter
14 the field, that by public general law, if there is an in-
15 ability to take care of the particular situation.

16 THE CHAIRMAN: Delegate Carson.

17 DELEGATE CARSON: Well, if I understand that,
18 Chairman Moser, you are saying that the Committee believed
19 it was desirable to do things on the local level but not-
20 withstanding the Committee's belief as to that, neverthe-
21 less the General Assembly can handle them any way they

1 desire and may or may not require county assent to these
2 proceedings?

3 DELEGATE MOSER: Correct.

4 DELEGATE CARSON: Thank you.

5 THE CHAIRMAN: Any further questions? Delegate
6 Gill.

7 DELEGATE GILL: I am very concerned about the
8 matter we had yesterday about consent to referendum and
9 right of the people. I am just wondering in No. 7.02
10 where the boundaries might be changed. You state there
11 shall be a referendum.

12 In 7.07, where the boundaries might be changed
13 again, you say this cannot result without the consent of
14 the municipal corporation and so on.

15 In 7.10 where the boundaries might be changed,
16 you say that there may be a referendum.

17 Do you anticipate that the boundaries might cause
18 redistricting of any of those areas involved, and to that
19 extent, how would the Article which we voted on yesterday
20 apply to these?

21 DELEGATE MOSER: They won't affect it at all.

1 DELEGATE GILL: Will you explain that a little
2 more, please?

3 DELEGATE MOSER: You relate this to the redis-
4 tricting issue which is something that, as I understand
5 it, was made nonreferable. That has nothing to do with
6 that. This is a matter of county boundaries. That's one
7 point.

8 Another point is this -- neither Suffrage and
9 Elections nor ourselves intend that their provision relate
10 to this in any way; nor do we intend that this relate back
11 to their provision in any way.

12 What you are referring to are two things. Rather
13 different. 7.02 indicates mandatory referendum on a
14 county-by-county basis for certain things. But a
15 county-by-county basis, that is entirely different from
16 7.07, which relates to municipal boundaries and just
17 municipal or county boundaries where the municipality
18 touches the county. This, of course, would be governed
19 by, if it is provided for by law of the municipal cor-
20 poration, to be governed by the municipal charter. I un-
21 derstand that most of them have referenda provisions, but

1 they vary widely.

2 There are 150 municipalities, and I don't know
3 what is in every charter; but ordinarily if a municipality
4 acted by law or as the charter provided, this kind of
5 thing would be subject to referendum there.

6 Similarly, if it is a charter county, the charter
7 counties, as I said, do have referenda provisions in there.
8 It might also be subject to a county referendum. It would
9 depend on the instruments of government of the county
10 and the charter of the municipality how that worked,
11 but it has no relationship to this other section we
12 approved yesterday.

13 THE CHAIRMAN: Delegate Pullen.

14 DELEGATE PULLEN: Thank you, Mr. Chairman.

15 Delegate Moser, my questions are rather simple.
16 They are following up the questions asked by Mr. Case
17 and Mrs. Mitchell. I am not concerned particularly with
18 the procedures and all those methods that you use for
19 accomplishing it, but Section 7.10, my question there is
20 this. Does that provide primarily for merger of certain
21 counties or sections of certain counties? Specifically,

1 does this mean that St. Charles and St. Mary's Counties
2 could come together by way of mechanical arrangements you
3 set up? Is that the intent? A change in geography if you
4 please?

5 DELEGATE MOSER: Absolutely not.

6 DELEGATE PULLEN: Then does it mean the establish-
7 ment of a dual system of government, a parallel system of
8 government, by which Charles County would operate in one,
9 its base as it does now, in St. Mary's, we will say the
10 same, but in certain categories they would work together
11 as a separate and dual system of government? Am I clear?

12 DELEGATE MOSER: Yes, sir, that is, I suppose, a
13 fair statement. In a dual system, you can take a number
14 of different means. It could be as I said, Maryland Port
15 Authority. Could be a regional planning council. Could
16 be almost anything. It could be very limited. Could be
17 a mass transit authority.

18 DELEGATE PULLEN: It involves possibly change of
19 boundaries. It involves, does it?

20 DELEGATE MOSER: No, it does not.

21 DELEGATE PULLEN: Then, in other words, it is a dual

1 system of government between two counties or more. If you
2 go to 7.11, is that government by functions? Is so, in
3 what respect does it differ from 7.10? Let me illustrate
4 what I mean. For instance, for years we have had library,
5 regional provisions for regional public libraries. We have
6 had on the Eastern Shore provisions for a community college
7 operated as far back as 1912, three counties operated a
8 high school, Talbot, Caroline and Queen Anne's County at
9 Queen Anne's.

10 Is this an extension of that principle?

11 DELEGATE MOSER: When you say 7.11, are you refer-
12 ring to 8.06? 8.06 is intergovernmental --

13 DELEGATE PULLEN: I refer to 7.11, financing by
14 intergovernmental authorities.

15 DELEGATE MOSER: What this would refer to is, what
16 it says, it is a limitation on their method of financing.
17 It makes clear there are exceptions to the limitations.

18 THE CHAIRMAN: Would you restate your question,
19 Delegate Pullen?

20 DELEGATE PULLEN: I am afraid you don't, but go
21 ahead.

1 THE CHAIRMAN: I think if you restate your question,
2 we will make more time.

3 DELEGATE PULLEN: I am trying to figure out if
4 7.11 is a different form of cooperation intergovernmental
5 actions or whether it is subsidiary to 7.10? In other words,
6 does it refer only to method of financing in cases you
7 cited?

8 DELEGATE MOSER: I think your question is whether
9 the term intergovernmental authorities used there is
10 limited to intergovernmental authority referred to in 7.10.

11 DELEGATE PULLEN: Yes.

12 DELEGATE MOSER: I suppose the answer is No,
13 because undoubtedly you could, it would be technically an
14 intergovernmental authority that could be set up under
15 8.06 by agreement between two counties.

16 DELEGATE PULLEN: Something in the form of a com-
17 pact?

18 DELEGATE MOSER: Yes.

19 DELEGATE PULLEN: By what means would you differ-
20 entiate between the cooperative functions of the dual
21 government in 7.10 and the compact government under 7.11?

1 DELEGATE MOSER: Under 7.10 this would be a matter
2 that the State legislature would establish. Under 8.06
3 it would be by simple agreement, like for instance, the
4 agreement between Baltimore City and Baltimore County to
5 have a joint incinerator facility if this has been agreed
6 to by now. This is an example of so-called intergovern-
7 mental cooperation agreements. That would be jointly
8 financed. I wouldn't be run by an authority. Probably
9 one or the other county would run it.

10 DELEGATE PULLEN: One final question. I am not
11 asking these to be antagonistic to the point of view,
12 merely trying to understand. Under 7.10, for instance,
13 would you have then, take two counties again, would St.
14 Mary's County continue to have its governmental agent with
15 all of the things now done possibly, Charles the same,
16 but in other respects they would have another governmental
17 agency created by the joint vote of the two counties?

18 DELEGATE MOSER: It is completely up to the business
19 of the joint vote. Under 7.10 what would happen is there
20 would be some other kind of body, it might be an authority
21 of some kind that would be performing something that the

1 counties are performing now. Presumably it would remove that
2 function or that function, whatever it is -- water, sewer,
3 or whatever would be removed from the county and handled by
4 this other group. I don't think there would be a duplica-
5 tion.

6 DELEGATE PULLEN: In other words, this is a govern-
7 ment of cooperative functions that transcends a county.

8 DELEGATE MOSER: It would be that, I suppose.

9 DELEGATE PULLEN: I break it down to a very common-
10 place level, but would it mean abolition of the government
11 of St. Charles and St. Mary's County?

12 DELEGATE MOSER: Absolutely not. It just wouldn't.
13 If that were done, they would have to proceed under 7.02,
14 and there would have to be a county-by-county referendum.

15 DELEGATE PULLEN: Thank you.

16 THE CHAIRMAN: Any further questions? The Chair
17 has a few questions to clarify the Committee on Style.

18 The expression is used several times throughout
19 this Article "governing bodies". Tell us what is meant
20 by "governing body".

21 DELEGATE MOSER: "Governing body" is in essence the

1 legislative body of the unit involved if it has one. If
2 it is an authority, it would not have really a legislative
3 body, would simply have a board. That is why "governing
4 body" is used and not legislature or council or something
5 like that.

6 THE CHAIRMAN: In Section 7.03, Lines 39 and fol-
7 lowing, there is a statement referring to a charter adopted
8 by any county prior to July 1, '72. Is it intended to
9 include a charter adopted prior to the adoption of the
10 new Constitution?

11 DELEGATE MOSER: Absolutely Yes. Any charter.

12 THE CHAIRMAN: Section 7.04 on Page 3 in Lines
13 6 to the end refers in two clauses or the last two words
14 of 6, "or by such additional means as may be provided in
15 the instrument of government or by the General Assembly
16 by public general law".

17 Is that intended to mean grammatically by such
18 additional means as may be provided by the instrument of
19 government and by such additional means as may be provided
20 by the General Assembly.

21 DELEGATE MOSER: Yes.

1 governmental unit which I take it is for the area and
2 framework of government, to have a popularly elected repre-
3 sentative regional government?

4 DELEGATE MOSER: Then it becomes a different thing.

5 DELEGATE CASE: What does it become?

6 DELEGATE MOSER: It becomes a popularly elected
7 representative regional government. That is a popular
8 distinction between the two.

9 THE CHAIRMAN: Delegate Case.

10 DELEGATE CASE: Would you define what is meant
11 in the draft by other units of local government and dis-
12 tinguish those from the first three we have discussed?

13 DELEGATE MOSER: The other units of local govern-
14 ment are intended as a catchall. If something else can be
15 thought of later on, we didn't want to exclude them in the
16 authority of the legislature, and we refer to these other
17 things and it is possible some animal might be created
18 henceforth which would not fit any of these.

19 I am frank to say I cannot think of any that might
20 be.

21 DELEGATE CASE: Thank you.

1 THE CHAIRMAN: Delegate Marion.

2 DELEGATE MARION: Delegate Moser, I have questions
3 about three particular areas. First of all, in Section
4 7.03 on Line 35, the word "law" is used. We have talked
5 about the distinction the Committee has drawn between
6 the word "law" and the three words "public general law".

7 Does the use of the word "law" in that sentence
8 mean that the General Assembly could enact a law applicable
9 to one county so that it writes in effect a separate charter
10 for each county which does not provide its own charter by
11 the cutoff date in that section?

12 Or is your intention that it should provide by
13 public general law a charter applicable to all counties
14 which do not act before that date?

15 DELEGATE MOSER: I think that the sentence, let's
16 say we thought the sentence was clear without inserting
17 "public general law" there. It really isn't a public
18 general law in the true sense.

19 What the sentence says is "The General Assembly
20 shall provide by law an instrument of government which
21 shall become effective." That means one. We think that

1 would be clear. But the intention is it be just one.

2 THE CHAIRMAN: Delegate Marion.

3 DELEGATE MARION: So it would be one instrument
4 of government which would apply to any and all counties
5 which do not act on their own before the cutoff date.

6 DELEGATE MOSER: Yes.

7 THE CHAIRMAN: Delegate Marion.

8 DELEGATE MARION: Secondly, in Section 7.05
9 under the shared powers concept, the third subsection
10 in that section relating to the exercise of any power which
11 has not been denied to the county by a public general law,
12 does the Committee mean that there has to be a specific
13 denial of the county's power to act in a particular area
14 by public general law, or do you mean that the county
15 may do anything which is not inconsistent with some public
16 general law already enacted by the General Assembly or
17 that a county may act only as to matters which are not
18 in a general subject area in which the General Assembly
19 has already acted and could be said to have preempted
20 the field.

21 DELEGATE MOSER: For the record and possibly at
the risk of being a little confusing, what we mean is two

1 of the things you mentioned, I think. This is the Com-
2 mittee's intention. That is to say, first, that the
3
4 General Assembly can expressly prohibit the exercise of
5 some power or function by counties. For instance, they
6 could say counties can't pass liquor laws, they could, or
7 they may prohibit the county from passing laws relating
8 to slot machines. For example, this would be a flat
9 denial.

10 In addition the General Assembly can deny a power
11 or function by preempting the field with a State law.
12 The county could still pass a law on the subject, but county
13 laws could not be inconsistent with the general law. It
14 would be a matter of construction.

15 For instance, I think it is perfectly clear when th
16 the General Assembly passes the Uniform Commercial Code
17 they mean to preempt the field. This would do it.

18 As a general statement I think, I state this for
19 the record, we can say that county law which does not pro-
20 hibit what the general law permits nor allows what the
21 general law prohibits would not be inconsistent. I don't

1 know whether this lends much clarity here, but it may
2 lend some clarity for posterity.

3 THE CHAIRMAN: Delegate Marion.

4 DELEGATE MARION: One other question. Looking
5 at both 7.05 and 7.11, 7.05 does authorize the counties
6 or grant to the counties power to tax. Section 7.11 refers
7 to collection of taxes imposed either by, well, refers to
8 collection of taxes by the popularly elected representative
9 local government.

10 Under what authority, if any, in this section
11 in front of us does the popularly elected representative
12 local government get the authority to tax?

13 DELEGATE MOSER: I don't know that I follow
14 this. Are you talking about, when you refer to, are you
15 talking about a county, or are you talking about any type
16 of popularly elected government?

17 DELEGATE MARION: The latter.

18 DELEGATE MOSER: It would have to get it by ex-
19 press grant from the General Assembly. In fact, this would
20 apply both ways.

21 What the interplay of these two sections means

1 if I understand your question to me is simply that you have
2 got to have a popularly elected board before that board
3 can itself enact a tax law.

4 However, it can collect a tax which the General
5 Assembly would impose or the county might impose, and then
6 in effect assign the collection to it. Does that answer
7 your question?

8 THE CHAIRMAN: Delegate Marion.

9 DELEGATE MARION: In other words, the powers
10 granted to the popularly elected representative regional
11 government would have to be expressed powers, and thereby
12 they would come directly from the General Assembly?

13 DELEGATE MOSER: Yes.

14 DELEGATE MARION: And there is nothing to prohibit
15 the General Assembly granting the power to such unit or
16 regional government, for example, to impose taxes?

17 DELEGATE MOSER: That is correct.

18 THE CHAIRMAN: Delegate Schloeder.

19 DELEGATE SCHLOEDER: Mr. Chairman, could you have,
20 this is in relation to Delegate Case's series of questions
21 earlier, could you have a multi-county popularly elected

1 school board that would then not be, would actually not
2 be an elected representative regional government? Could
3 you have that?

4 DELEGATE MOSER: I suppose you could have it. I
5 would say it would fit within the definition of a regional
6 government under this provision, in case it covers more
7 than a single county.

8 THE CHAIRMAN: Delegate Schloeder.

9 DELEGATE SCHLOEDER: Government in what sense
10 there? I am a little confused now about our term "govern-
11 ment".

12 DELEGATE MOSER: A government really is any unit
13 that, let me be fairly precise. I think that what the
14 Committee intends by the term "unit of local government",
15 it is really any unit, any agency which is below the State
16 level and performs a service. You have to do this almost
17 by example. It would exclude for instance an election
18 district. I would say that within this definition you
19 have given, a regional school board would in a sense be
20 a regional government, and it would fit within this if it
21 were popularly elected.

1 THE CHAIRMAN: Delegate Schloeder.

2 DELEGATE SCHLOEDER: One other question relating
3 to 7.10; Lines 42 through 45,"The General Assembly may
4 provide" and so forth. Would you foresee any problem in
5 having the General Assembly having this original power of
6 setting up a regional government without any express check
7 here on the part of the voters or people involved in those
8 counties or that region?

9 DELEGATE MOSER: I don't understand your question.

10 DELEGATE SCHLOEDER: Very simply this: Let's
11 assume you wanted to, the General Assembly wanted to
12 set up a regional government in Southern Maryland. As I
13 understand reading this Section 7.10, the General Assembly
14 could do this. It may provide the referendum, establishing
15 a popularly elected representative regional government,
16 but it may not. Let's assume it does not, but does set
17 up a regional government in Southern Maryland, but the
18 people in those counties in Southern Maryland would not
19 be at that time ready for or willing to accept regional
20 government.

21 Would you foresee any problem in allowing the

1 General Assembly to set this regional government as from the
2 top?

3 DELEGATE MOSER: I think that what you have to
4 look at here is, who makes up the General Assembly. The
5 General Assembly are representatives of the people. They
6 are representatives of the people in the area. I think it
7 is perfectly clear if the temper of the times is question-
8 ble in any way at all, that the legislature most certainly
9 is going to provide for a referendum, and therefore if
10 what you mean is, is this doing something that might be
11 harmful to the people, the answer is, Absolutely not. You
12 can go even further.

13 If, for instance, you have a very limited form of
14 entity being set up such as your school board mostly, but
15 maybe not that, take the mass transit authority, and the
16 idea was that the General Assembly might want to provide
17 this with some type of popularly elected representative
18 group, if they did, I would not advocate it; but it is
19 conceivable, they shouldn't be forced it seems to me to
20 submit this to a referendum.

21 In addition this permits broad choices. They

1 might do it on a county-by-county-basis, if they did decide
2 to submit it to referendum or might do it on an area wide
3 basis. Does this answer your question?

4 THE CHAIRMAN: Delegate Schloeder.

5 DELEGATE SCHLOEDER: May I just clarify for myself.
6 From what I gather from your answer here and from what
7 is written in the supporting Committee Report, memorandum,
8 you would feel then that the General Assembly in its combined
9 wisdom would not act against the interests of the people
10 involved in the area where a multi-county government
11 might be established.

12 DELEGATE MOSER: I wouldn't think they would do it
13 if they wanted to be elected again.

14 THE CHAIRMAN: Before recognizing anyone else to
15 speak, the Chair recognizes Delegate Fox for the
16 purpose of making an announcement.

17 DELEGATE FOX: Mr. President, Mr. Chairman, you
18 have it there. Maybe you might just do it. It would be
19 quicker.

20 THE CHAIRMAN: All right. I understand that in
21 the gallery over my head there are forty students from the
Sixth Glen Avenue Elementary School in Salisbury with their

1 principal, Mr. Sheldon Larmore, and their teacher, Miss
2 Clare Meyer. (Applause.)

3 Delegate Cardin.

4 DELEGATE CARDIN: Mr. Chairman, again back to
5 Section 7.10, the present Constitution in Article XIII,
6 Section 1, has a mandatory referendum. However, Article
7 XVI, Section 1, permitted people to bring to referendum any
8 change in boundary or any form of boundary or governmental
9 change.

10 The new provision for referendum which was adopted
11 by this Committee yesterday has eliminated Section 16.
12 In our restrictions to referendum, we have legislative
13 districts or apportions.

14 Is it conceivable that in the General Assembly
15 under Section 7.10 of your Article, the General Assembly in
16 establishing a new form of regional or multi-county
17 government could have new district lines? If it does, would
18 this automatically restrict this procedure from being
19 brought to referendum?

1 DELEGATE MOSER: I would say no, if I under-
2 stand your question. You went through a lot of prelimi-
3 naries I am not sure of. You mentioned some existing
4 provisions. I was just thumbing through to check on it.

5 THE CHAIRMAN: Delegate Cardin will restate
6 her question.

7 DELEGATE CARDIN: The changes made when we adopted
8 a new referendum procedure yesterday were such that
9 we limited the power of the people to bring to referendum
10 certain areas. One was legislative districting or changes.
11 In establishing a new government, either multi-county
12 government or new regional government with popularly
13 elected representatives, is it conceivable we would
14 then have new districts from which to elect people?

15 DELEGATE MOSER: The answer is 7.10 would over-
16 ride that limitation which specifically permits upon crea-
17 tion of so-called popularly elected regional government a
18 referendum. It permits it. Your question was more, I
19 take it, well, if they didn't do it, could this be peti-
20 tioned to referendum?

21 DELEGATE CARDIN: That can.

1 DELEGATE MOSER: Having provided it on a state-
2 wide basis -- I would have to look at your provision, which
3 I don't have in front of me, to answer your question.
4 If you have limited in your provision and indicate that --

5 THE CHAIRMAN: Delegate Cardin refers to the
6 provision adopted by the Committee of the Whole several
7 days ago which provides that the law providing for
8 redistricting or reapportionment shall not be subject to --

9 DELEGATE MOSER: To answer flatly your question,
10 it was not our intention to prevent this from being referred
11 statewide on petition of the people. When I say "this" I
12 mean 7.10.

13 I wouldn't think this would be a fair interpre-
14 tation of the words that you used.

15 THE CHAIRMAN: Delegate Cardin.

16 DELEGATE CARDIN: Would it be possible to
17 change "may" in line 42 to "shall," to make certain that the
18 people could petition to referendum?

19 THE CHAIRMAN: Delegate Moser.

20 DELEGATE MOSER: What you are saying, if you do
21 change the "may" to "shall" is very simply this: You are

1 requiring a referendum for the creation of a popularly
2 elected representative regional government. The answer
3 to it is very simply that the committee is very strongly
4 opposed to requiring the legislature to do it, because
5 it might very well be a very simple matter, and there-
6 fore it should be just up to the legislature to make up
7 their own minds on whether to refer it or not.

8 This doesn't take away from whatever your prob-
9 lem is.

10 THE CHAIRMAN: Delegate Moser, the Chair might
11 interject. It seems to me perhaps you still missed the
12 point of Delegate Cardin's question. The provision she is
13 talking about is the provision that gives a citizen the
14 right to initiate a referendum. I understood you to say
15 your committee was recommending here not a provision for
16 citizen referendum, but a provision for referendum to be
17 provided by the General Assembly.

18 DELEGATE MOSER: That is correct.

19 THE CHAIRMAN: Isn't that the answer to the
20 question she asks, then?

21 DELEGATE MOSER: I think it is. I thought at

1 one point I had said that.

2 THE CHIARMAN: Delegate Cardin.

3 DELEGATE CARDIN: We will get to that later.

4 I have one other question that I would like to
5 ask: In section 7.01 you have, "For the purpose of this
6 Constitution, "county" shall include Baltimore City."

7 Do I take it, for example, in reference again
8 to our referendum section which was adopted, we need not
9 mention Baltimore City separately? Would this cover
10 every section of the Constitution?

11 DELEGATE MOSER: It is intended to. This is a
12 matter for Style and Drafting.

13 I would say yes, that you do not have to worry
14 about the use of the term "county", that it would be deemed
15 to include Baltimore City wherever it is used in the Consti-
16 tution.

17 DELEGATE CARDIN: Thank you.

18 THE CHAIRMAN: Delegate Boileau.

19 DELEGATE BOILEAU: Chairman Moser, as I
20 understand the 1954 adoption of section 11(e) of the
21 Constitution, the Dillon Rule was substantially reversed

1 as far as the counties are concerned.

2 Through the use of the words "existing powers"
3 that Delegate Adkins alluded to earlier, is this reversal
4 maintained in the proposed draft the committee came up with?

5 DELEGATE MOSER: The intention, subject always
6 to change by the legislature, is to retain for them exactly
7 what they have before the new Constitution is adopted. If
8 that includes a reversal of the Dillon Rule -- I don't
9 know whether it did or not -- but if it did, then they retained
10 this.

11 THE CHAIRMAN: Delegate Boileau.

12 DELEGATE BOILEAU: If it does include a reversal
13 of the Dillon Rule, effectively you are reversing the
14 Dillon Rule across the board for all local governing
15 units, Baltimore City, counties, and maintaining it for
16 municipalities, if it includes municipalities.

17 DELEGATE MOSER: I can't say specifically that
18 is the intention of the committee. I can only say if such
19 was the case, then such is the case now.

20 THE CHAIRMAN: Delegate Boileau.

21 DELEGATE BOILEAU: I am not asking intention,

1 but in fact the effect.

2 DELEGATE MOSER: I can't answer that with
3 respect to municipalities. What we intend to do, I stated
4 it a number of times, is to continue the powers of munici-
5 aplities unchanged, but subject to change by the General
6 Assembly.

7 THE CHAIRMAN: Delegate Moser, as I understand
8 Delegate Boileau's second question, he was not asking
9 about municipalities.

10 DELEGATE BOILEAU: The second question would
11 include all of them. I understand there was a conditional
12 answer given to the first question, and I realize there would
13 have to be a conditional answer given to the second question.

14 THE CHAIRMAN: Is the Dillon Rule reversed
15 as to counties or as to multi-county authorities?

16 DELEGATE MOSER: The answer with respect to
17 counties is yes. With respect to multi-county govern-
18 ments, no, it would not be true, because we are sticking
19 to an express grant of powers for them.

20 THE CHAIRMAN: Delegate Boileau.

21 DELEGATE BOILEAU: If in fact it is reversed,
perhaps when reversed for cities it will be reversed for

1 counties in providing uniform rule, is that not correct
2 -- or would you be providing uniform rule?

3 DELEGATE MOSER: Except for these new creatures
4 Delegate Case was asking me about, it could be almost
5 anything you see. In that area it would not be uniform
6 but with respect to municipalities, assuming your
7 premise is correct, and counties, this would be true, what
8 you just said would be true.

9 THE CHAIRMAN: Delegate Sollins.

10 DELEGATE SOLLINS: Chairman Moser, with regard
11 to section 7.03 and 7.04, am I correct in understanding
12 that in the future each county, both those having instru-
13 ments of government, as you now call them, and those that
14 will get them in the future, will have the right to select
15 their members of their legislative branch or county
16 councils, as they are called, in a manner that each county
17 chooses?

18 DELEGATE MOSER: That would be the combined
19 effect of section 7.03 and 7.05.

20 THE CHAIRMAN: Delegate Henderson.

21 DELEGATE HENDERSON: Mr. Chairman, my question

1 may be one of draftsmanship, but I find myself very
2 confused on section 7.10. You start off with the
3 heading, "Establish multi-county governmental units."
4 Then you speak of four different sorts. There is multi-
5 county governmental units; intergovernmental authroity;
6 popularly elected, representative regional governments;
7 other units of local government - four titles. Yet the
8 referendum provision only refers to one. That is the popu-
9 larly elected one.

10 When you get down to financing intergovernmental
11 units, that only deals with one class of the four which have
12 been mentioned before.

13 Is it the intention that these finance provisions
14 should be limited to one out of the four types, or is the
15 reference number to be limited to one out of the four
16 types? That is my question.

17 DELEGATE MOSER: I think the answer to your
18 first question is probably the title to 7.10 is a little
19 inapt. It is absolutely clear the intention of the com-
20 mittee it is say that the referendum, permissible referen-
21 dum be allowed only with respect to the popularly elected,

1 representative regional government, which I already defined
2 I think fairly precisely for the record; not to the
3 other units in the sentence.

4 With respect to 7.11, financing of inter-
5 governmental authorities, we may get to some problems
6 there, as you point out.

7 Intergovernmental authorities, as used there,
8 are intended to include the agencies that I tried to describe,
9 the types of agencies I tried to describe in answer to Dele-
10 gate Case's question. It would relate to authorities.
11 If they are popularly elected, if they have a popularly
12 elected representative government, they could tax; other-
13 wise they could not.

14 THE CHAIRMAN: I take it the answer to the
15 question is yes, if I understand you correctly, Delegate
16 Moser?. Is that correct?

17 DELEGATE MOSER: The answer to part of the
18 question is yes.

19 THE CHAIRMAN: I wanted the record straight.
20 I understood Delegate Henderson's second question was
21 whether section 7.11 was intended to be limited to

1 intergovernmental authorities.

2 I understood you just now to say that is
3 correct.

4 DELEGATE MOSER: That would be true, except
5 that the point I make, the major point is that it has to
6 be popularly elected, representative government before
7 it can tax.

8 THE CHAIRMAN: Delegate Pascal.

9 DELEGATE PASCAL: Delegate Moser, I draw
10 reference to 7.11. In lines 3 and 4 we are given, it is
11 the committee's intention to give the General Assembly oppor-
12 tunity to create regional government on authority or by
13 popular election.

14 Would the imposing of the service charges and
15 benefit charges be subject to referendum after they are
16 imposed by any of these classifications?

17 DELEGATE MOSER: The answer to that, when
18 you say "any of these classifications," take intergovernmental
19 authorities, take the Maryland Port Authority. Let's be
20 specific.

21 The Maryland Port Authority imposes, as I

1 understand, certain charges and benefit assessments on use
2 of port facilities. This is the type of service charge
3 we are speaking of. That would not be subject to referen-
4 dum. This would not be any definite area to submit to
5 referendum. With respect to something like the
6 Washington Suburban Sanitary Commission, this, too, is an
7 authority. It imposes benefit taxes, as I understand it.
8 But what happens is that again, as I understand it, these
9 are created either by county law or in some way by law,
10 which in turn is subject to being referred.

11 If you have a popularly elected representative
12 local government it would depend on what the charter of the
13 local government said. For instance, a county: Ordi-
14 narily some counties, I suppose, do permit referendum on
15 tax laws, but probably most don't.

16 Does this answer your question?

17 THE CHAIRMAN: Delegate Pascal.

18 DELEGATE PASCAL: What I am saying is that we
19 are in an area of popularly elected regional government,
20 and one or two of the counties have different stipulations
21 in their charter.

1 Was it the committee's desire that when they
2 impose these service charges, would this be subject to
3 referendum in that particular region?

4 DELEGATE MOSER: This would be subject completely
5 to what the General Assembly did in setting it up.

6 DELEGATE PASCAL: Thank you.

7 THE CHAIRMAN: Delegate Chabot.

8 DELEGATE CHABOT: Delegate Moser, in your
9 colloquy with Delegate Marion about 7.05 I believe you
10 tried a brief definition of preemption. I wonder how it
11 would apply to the situation of the State's Open Housing
12 Law and Montgomery County's Open Housing Ordinance,
13 which prohibits some of the things that the State law does
14 not prohibit.

15 Since the State has entered that field, would
16 you interpret section 7.05, sub (3), to prohibit the county
17 from entering that field?

18 DELEGATE MOSER: No.

19 THE CHAIRMAN: Delegate Chabot.

20 DELEGATE CHABOT: Could you explain why, or did
21 I misunderstand your definition of preemption?

1 DELEGATE MOSER: I don't know whether it was
2 possible to understand it or not. I think that normally
3 in a law such as that you can have a stricter law.
4 I think basically whether or not, it is a question of
5 legislative intent, really. If you have a law that the
6 General Assembly obviously intends should not be changed by
7 local ordinance of the county or something like that,
8 that would be a preemption.

9 I would just as soon not, if I can avoid it,
10 set forth any standards here. I think it would be up to
11 the courts.

12 THE CHAIRMAN: Delegate Chabot.

13 DELEGATE CHABOT: Then may I take it that by
14 7.05, sub (3) you mean simply the doctrine of preemption?
15 You don't mean to vary it to set forth standards?

16 DELEGATE MOSER: I would say that would be
17 correct.

18 THE CHAIRMAN: Delegate Koger.

19 DELEGATE KOGER: Delegate Moser, in the
20 Recommendation submitted, what protection does the munici-
21 pality have from being bullied or being taken advantage

1 of by a county government?

2 DELEGATE MOSER: I don't understand the
3 question, sir.

4 DELEGATE KOGER: In other words, suppose a
5 newly incorporated town wanted a special right-of-way
6 or perhaps water brought to it, and some powers of
7 the county wanted to prevent it.. In the Recommendation,
8 do you have anything in here to give that particular
9 municipality any redress or any appeal?

10 DELEGATE MOSER: A new municipal corporation?

11 DELEGATE KOGER: Yes.

12 In other words, say you established a new town
13 in Maryland.

14 DELEGATE MOSER: Right.

15 DELEGATE KOGER: Suppose they wanted to have
16 water or something brought down to them, and you had
17 people in -- you had factions or organizations in your
18 county that would like to prevent this. What right of
19 appeal would a town or municipality have against being
20 taken advantage of?

21 DELEGATE MOSER: I refer you to 7.08, which

1 relates to new municipal corporations. To begin with,
2 the county has to provide by law for creation of new
3 municipal corporations. It may by law grant to and with-
4 draw all powers of counties, subject to procedures
5 the General Assembly might provide.

6 If the General Assembly has not provided any
7 procedures, I would say that the co-nty would be in
8 strict control of new municipalities; but the General
9 Assembly could provide certain standards. They might pro-
10 vide precisely the same arrangement for new municipalities
11 as for existing ones. This might, if it were boundary
12 problems, it might involve a boundary commission arrangement
13 or something like that, Delegate Koger.

14 THE CHAIRMAN: Delegate Case.

15 DELEGATE CASE: Mr. Chairman, my problem
16 still is definitional. Perhaps this time I can approach
17 it a little differently, by way of an example that we can
18 all understand.

19 The Harford County Sanitary Commission, which
20 exists under a public local law, guided through the General
21 Assembly by Senator James, provided that none of the

1 incorporated communities in Harford County are part of
2 it, but other than that; throughout the county this agency
3 has the right to construct, maintain, and service water
4 and sewer facilities, and so on.

5 Do I take it this would be, under the defini-
6 tional concept of the proposal, a civil unit?

7 DELEGATE MOSER: Only if it were created by the
8 county. The civil unit is strictly that. It would not
9 be then, because this is a creature of the General Assembly
10 as I understand it.

11 THE CHAIRMAN: Delegate Case.

12 DELEGATE CASE: Forget for a minute how
13 the one that was created was created, and assume Harford
14 County wanted to do that after the new Constitution had
15 become effective. Would it then be a civil unit, as de-
16 fined?

17 DELEGATE MOSER: Yes, it would be included
18 within that term.

19 DELEGATE CASE: It would be a civil unit.

20 Now, suppose that the year after it was created
21 the County Council of Harford County decided to include

1 Bel Air in this unit. It would then become, would
2 it not, an intergovernmental authority?

3 DELEGATE MOSER: I suppose it would, under the
4 definition that we use here. It would be an intergovernmental
5 authority if they did it in that way.

6 DELEGATE CASE: Very well.

7 Let us further assume that Harford County has
8 the power to impose, as it does and presumtively will have
9 under the new document, the power to levy and impose real
10 estate taxes. I would assume from what has already been
11 established in the first instance, namely when no incor-
12 porated towns were included, Harford County could delegate
13 power to levy and impose a real estate tax to this civil
14 unit under 7.08; isn't that correct?

15 DELEGATE MOSER: Let me take a look.

16 I suppose it could, Delegate Case. It could
17 authorize them to impose a real estate tax if it wanted
18 to. It is a sub-unit of the county.

19 THE CHAIRMAN: Delegate Case.

20 DELEGATE CASE: That is the way I would under-
21 stand it.

1 Now, when it takes in Bel Air and becomes an
2 intergovernmental authority, though, under section 7.11
3 it no longer has that power to delegate the right to impose
4 real estate tax. I am wondering whether this isn't the point
5 which ought to be cleared up.

6 DELEGATE MOSER: I don't follow quite that
7 far with you. Do you want me to give you our reasoning
8 under 7.11?

9 DELEGATE CASE: Yes. 7.11 says that the
10 intergovernmental authority which this animal becomes
11 once Bel Air is taken in has the right to collect taxes, but
12 does not have the right to impose them; whereas a civil
13 unit would have the right, since it would be delegable
14 under section 7.08.

15 DELEGATE MOSER: I see the point you mean.
16 You know you do have this problem if you combine, lots of
17 problems ^{if} /you combine a municipality with anything else,
18 the way you suggested it.

19 I would say that something like that if done
20 properly, they shouldn't have the power you suggest. That
21 is to say that there are going to be so many other

1 confusing problems that might arise that this takes it out
2 of the category that it should be under the control of
3 the county, if it is something that the county can't
4 exercise exclusive control over because it includes an
5 existing municipality.

6 THE CHAIRMAN: Delegate Case.

7 DELEGATE CASE: The point I make is that in one
8 case where probably the resort to taxing power would
9 not be as necessary is granted,, whereas in the second we
10 are taking on more of a burden, and it might be necessary
11 it is withheld. I suppose this is an inconsistency which
12 the committee would go along with if we prepared the neces-
13 sary amendment to take care of it.

14 DELEGATE MOSER: I think so. I am not with you
15 on this business of imposing a tax. A civil unit would
16 simply be given the right to collect a tax. An authority
17 would be given the right to collect the tax, too.

18 THE CHAIRMAN: Delegate Case.

19 DELEGATE CASE: I respectfully beg your pardon.

20 As I remember 7.08 it says a county may
21 provide by law for creation of civil units and may by law
grant to or withdraw from them any and all powers of the

1 county.

2 DELEGATE MOSER: A short answer is it is not
3 intended to include power to enact a tax law. Sorry.

4 THE CHAIRMAN: Delegate Burdette.

5 DELEGATE BURDETTE: Mr. Chairman, I should
6 like to ask the intent of the committee with respect to
7 section 7.09 and its possible limitations. This
8 section I should presume applies either to existing
9 municipalities or municipalities that may be created in
10 the future, and says either the General Assembly or the
11 County may grant power to those municipalities without
12 any limits whatever, while 7.08 has discussed grant of
13 powers which the county has with respect to new ones.

14 Is this removal of limitation intended?

15 DELEGATE MOSER: I am not with you on there
16 being a limitation on 7.08 and no limitation on 7.09.

17 THE CHAIRMAN: Delegate Burdette.

18 DELEGATE MOSER: If you can refer to the
19 line --

20 DELEGATE BURDETTE: In 7.08, line 15 and 16,
21 "The county may by law grant to and withdraw from the

1 municipalities any and all powers of the counties."

2 DELEGATE MOSER: That is right.

3 DELEGATE BURDETTE: But in 7.09, either
4 the General Assembly, 7.09, 24 and 25, or the
5 county by law may grant additional powers to municipal
6 corporations without any limit on those municipal corpora-
7 tions.

8 Right off I would say that would give a county
9 governing body power from the people to grant to the
10 municipal corporations almost anything it pleased, and
11 further the General Assembly couldn't withdraw it because
12 it specifies "the granting authority may withdraw such
13 power"; but perhaps I am misreading it.

14 DELEGATE MOSER: No, you may be misreading it.
15 I can only express our intention, which is simply this:
16 I think it is implicit the county can't give it any power
17 it doesn't have. I think this is fairly obvious, or at
18 least it seemed that way to us. But it is intended to
19 mean the same thing, that they can grant additional powers
20 which the county has to municipal corporations.

21 THE CHAIRMAN: Delegate Burdette.

1 DELEGATE BURDETTE: Would you interpret that
2 if the General Assembly took away from the county this
3 particular type of power it would also automatically take
4 it away from municipalities? Apparently there is no way
5 here the General Assembly could take a power away from
6 municipalities unless it takes it away from counties by
7 interpretation.

8 DELEGATE MOSER: They could legislate by public
9 law withdrawal of this power, and if you want to structure
10 it precisely, one can say the General Assembly is supreme.
11 When they withdraw a law from counties it would also be
12 withdrawn, the power or function, from the municipality.

13 THE CHAIRMAN: Delegate Hanson, do you have
14 a question?

15 DELEGATE HANSON: Mr. Chairman, I have a series
16 of questions that I hope may clarify a few points for my-
17 self and perhaps for others.

18 In answer, Chairman Moser, to a question by
19 Delegate Marion regarding section 7.03 where the term
20 "by law" is used regarding the power of the General Assembly
21 to provide by law for instruments of government for those

1 counties not adopting their own by 1972, you seem to
2 say that that section meant that the General Assembly would
3 provide one instrument for use by all counties.

4 It seems to me there may be some confusion between
5 your response to that question the way the section reads
6 and pages 16 of your memorandum, lines 8 through 5, which
7 seems to suggest that this language means the General
8 Assembly must provide optional forms for adoption by the
9 counties.

10 What I am trying to get here is a construction
11 of this section. Do you mean by that the General Assembly
12 must provide only one form, or that the General Assembly
13 may provide options which the counties may opt for?

14 DELEGATE MOSER: It may be there is confusion
15 between two sentences. The second sentence of 7.03 re-
16 quires a choice of procedures. This choice has to be the
17 same for all counties, but has to be a choice. The next
18 sentence is intended to mean there would be one instrument
19 of government, just one, as I answered it before. It says
20 that.

21 If it would be clearer with the words "public

1 general law in there, that would be fine with us. But it
2 really isn't quite a public general law, is it; a law which
3 sets forth a charter, and all you have to do is look at
4 23(b) and see how it is set up.

5 DELEGATE HANSON: I am bothered by the way
6 I read the section on its face, if it be construed to mean
7 that the General Assembly may legislate individually for
8 each county not having adopted a charter; and I gather
9 from your response that this is incorrect?

10 DELEGATE MOSER: That is correct. It is in-
11 correct.

12 THE CHAIRMAN: Delegate Hanson.

13 DELEGATE HANSON: Thank you.

14 Then I want to be sure that I am clear that
15 you mean that the General Assembly then would enact only
16 one option or only one instrument of government, which
17 would then be required for any county not adopting a charter?

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1 DELEGATE MOSER: That I think is the intention
2 of the committee by this language. It is not an option,
3 it is a charter they have, because it is automatically
4 effective July 1, 1972 for those counties which have not
5 adopted their own instrument of government. Therefore,
6 they only adopt one because the county theoretically has
7 gone through the process. You could not have several
8 automatically effective.

9 DELEGATE HANSON: Did your committee consider
10 the possibility of having the General Assembly provide
11 optional forms that would be available for counties not
12 wishing to draw up their own charter but which would have
13 to be adopted by a dictate?

14 DELEGATE MOSER: I suppose that one of the
15 things -- let me put it this way: We intend that the
16 legislature in essence do something like that, if they
17 want to.

18 In the second sentence where we speak in terms
19 of procedure, they could go as far as you suggest. This
20 is a possibility. We do not spell it out. We rely on
21 the legislature.

1 DELEGATE HANSON: I like that answer, Mr. Chair-
2 man, so to make it perfectly clear for the record then,
3 this section would permit the General Assembly to adopt
4 either a single instrument of government for the counties
5 not adopting their own charter or it could also permit
6 the General Assembly to enact an optional forms act and pro-
7 vide procedures for adoption of one of those forms by
8 counties.

9 DELEGATE MOSER: No. (Laughter.) I do not know
10 where the misunderstanding creeps in. I thought I tried
11 to be clear, sometimes I do lack clarity.

12 But what we intend, I will phrase it that way,
13 by the first, the second sentence is that the General
14 Assembly shall provide a choice of procedures.

15 At that point, this is the optional arrangement,
16 it means that they could provide if they wanted to a
17 series of charters to aid counties in adopting them.

18 They could have something that would be a con-
19 tinuation after combined Executive and Legislative Branch/
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1 on. There could be a series of them. It is completely
2 up to the General Assembly.

3 Once that has been done there is something
4 else, a second step. That is simply this: The General
5 Assembly shall provide a sample. I refer you again to
6 the municipal corporation sample which is in the code,
7 something like that, which will automatically become
8 effective on July 1, 1972, if a county has not adopted
9 their own. These are two different things.

10 Delegate Hanson.

11 DELEGATE HANSON: I think I then understand
12 although I may disagree.

13 The second question that I wanted to ask relates
14 to Section 7.02 and 7.10, considered together in light of
15 the discussion of these sections on pages 11 through 13
16 of the committee memorandum dealing with the problem of
17 special purpose districts and what is or may not be a
18 desirable form of local government.

19 Is it the policy of section 7.02 and 7.10 read
20 together to constitutionally favor general purpose units
21 of local government such as the county and regional

1 popularly elected representative governments or the state
2 government in preference to special purpose districts?

3 DELEGATE MOSER: Yes.

4 THE CHAIRMAN: Any further questions?

5 Delegate Hanson?

6 DELEGATE HANSON: Yes. Based on that answer
7 then, should -- or let me ask this: Why did not the
8 committee impose some greater caution or limitation upon
9 the capacity of the General Assembly to establish special
10 purpose authorities?

11 DELEGATE MOSER: For example, what?

12 DELEGATE HANSON: Such as suggesting that they
13 might not be established if a general purpose unit of
14 government were capable of performing the function.

15 DELEGATE MOSER: We would hope this is what
16 the General Assembly would do.

17 One of the problems I think you have in the
18 suggestion that you made, there were some delegate pro-
19 posals similar to this that would have restricted the
20 General Assembly in this regard, the General Assembly
21 has to be free to exercise its judgment. You are talking

1 about strengthening the General Assembly. We are hopeful
2 they will follow this but I do not think we can tie their
3 hands in any respect.

4 THE CHAIRMAN: Delegate Hanson, do you have
5 further question?

6 DELEGATE HANSON: Yes.

7 Do Sections 7.05 and 7.06 mean that once they are
8 both in effect, that the local governments instead of
9 the General Assembly will then have jurisdiction over any
10 intracounty authorities such as a metropolitan district
11 of something of that nature that exists solely inside the
12 boundaries of the county, that the county would then have
13 jurisdiction over the organization and regulation of
14 that authority rather than the General Assembly?

15 DELEGATE MOSER: As an example --

16 DELEGATE HANSON: Take the Howard or Harford
17 County metropolitan district.

18 DELEGATE MOSER: It would depend really again
19 on whatever schedule of, or what ever interim provisions
20 there are.

21 Presumably the structure of who does what as

1 between the General Assembly and counties would be pre-
2 served. It would continue the way it is now. That would
3 constitute probably if the General Assembly handles that
4 now, the General Assembly probably would continue to do
5 it under the interim provision.

6 THE CHAIRMAN: Delegate Hanson.

7 DELEGATE HANSON: Under the interim provision.

8 Once 7.05 and 7.06 are both fully operative
9 would any such district established by local law then, or
10 by public local law then be subject to the jurisdiction
11 of the county government and not to the jurisdiction of
12 the General Assembly?

13 DELEGATE MOSER: I really cannot answer the
14 question without having a couple of specific laws in front
15 of me.

16 DELEGATE HANSON: Harford County --

17 THE CHAIRMAN: If the Chair may interrupt your
18 question, it may be clearer to Delegate Moser if you do
19 not refer to previously existing authorities.

20 I take it your question is directed to authori-
21 ties hereafter created.

1 DELEGATE HANSON: No, my question is directed
2 to existing authorities which were created by local
3 legislation.

4 DELEGATE MOSER: I have answered it, it depends
5 on what happens with respect to interim provisions. The
6 answer is, any suggestion is with respect to new ones
7 of course the power lies with the county unless the
8 legislature acts.

9 THE CHAIRMAN: Delegate Hanson.

10 DELEGATE HANSON: Unless the legislature would
11 preempt that power to act by counties?

12 DELEGATE MOSER: Yes.

13 DELEGATE HANSON: Under section 8.06 may the
14 counties acting jointly under this section do everything
15 that the state can do under section 7.10 except to estab-
16 lish a popularly elected regional government? In other
17 words, can they create an intergovernmental authority or
18 other intercounty agency of some sort?

19 DELEGATE MOSER: Yes, I think they could.

20 THE CHAIRMAN: Delegate Rybczynski.

21 DELEGATE RYBCZYNSKI: Mr. Chairman, looking

1 at Section 703 and this section which you previously ex-
2 plained as meaning that one charter would be adopted by
3 the General Assembly for possibly many counties, am I
4 correct in saying that even though a county might be
5 actively trying to get a charter together or instrument
6 of government together, that if it were not accepted by
7 the county people voting that the statewide charter
8 would then become operative on July 1, 1972?

9 DELEGATE MOSER: If it were not adopted by that
10 time, yes.

11 DELEGATE RYBCZYNSKI: All right. Going to 7.04
12 let's say that the charter that the people are trying to
13 get together and get approved by their county people
14 is a lot different, maybe totally different from the
15 standard form. Would the wording of 7.04, that is, an
16 amendment to the instrument, allow the county to adopt
17 a totally new charter, a totally new charter, not just
18 an amendment to the state form charter?

19 DELEGATE MOSER: They could amend by adopting
20 a totally new charter. The intention is to make this
21 as broad as possible but obviously some of the provisions

1 would be the same. They would have to be. But the
2 amendment is intended to be given broad meaning.

3 THE CHAIRMAN: Delegate Rybczynski.

4 DELEGATE RYBCZYNSKI: No further questions.

5 THE CHAIRMAN: Delegate Clagett.

6 DELEGATE CLAGETT: Mr. Chairman, would not that
7 choice or that right of amendment provided by Section
8 704 make it unnecessary to provide an optional mandatory
9 instrument on the July 1 1972 date? In other words,
10 by reason of fact that the charter which becomes effec-
11 tive by reason of the county not having enacted one prior
12 to that date could be amended to conform to whatever
13 that county wanted?

14 DELEGATE MOSER: That is true.

15 DELEGATE CLAGETT: Now, with respect to the
16 question that was asked by Delegate Case in connection
17 with Section 7.08, whereas he pointed out a civil unit
18 might be granted by the county taxing power whereas an
19 intergovernmental authority can only collect service
20 charges or benefits, does not Section 708 further provide
21 that if there is anything detrimental about giving the

1 civil unit the taxing power, that it can intervene and
2 establish standards or procedures to correct such abuse
3 if it exists?

4 DELEGATE MOSER: That is not the answer, if I
5 may say so. That really is not the answer.

6 The answer to Delegate Case's problem, which
7 I missed until the end of the question he asked, is that
8 there is a prohibition in here against the civil unit
9 enacting a tax law. It is perfectly clear not only from
10 this section but from section, I do not know whether 801,
11 of the proposal from State Finance and Taxation, that
12 only a popularly elected government can enact a tax.
13 You do not get into the problem, you just do not start
14 it.

15 THE CHAIRMAN: Delegate Claggett, do you have
16 another question?

17 DELEGATE CLAGETT: I believe that is all, Mr.
18 Chairman.

19 THE CHAIRMAN: Delegate White.

20 DELEGATE WHITE: Mr. President, I rise on a
21 point of personal privilege.

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